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THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

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U.S. Customs Service

Treasury Decisions

(T.D. 81-109)

Cotton, Wool, and Manmade Fiber Textile Products—Restriction on Entry

Restriction on entry of cotton, wool, and manmade fiber textile products manufactured or produced in Korea

There are published below directives of September 5, 23, and 25, 1980, received by the Commissioner of Customs from the chairman, Committee for the Implementation of Textile Agreements, concerning restriction on entry of cotton, wool, and manmade fiber textile products in certain categories manufactured or produced in Korea. These directives amend, but do not cancel, that committee's directive of December 20, 1979 (T.D. 80-65).

These directives were published in the Federal Register on September 9, 1980 (45 F.R. 59371), September 26, 1980 (45 F.R. 63897), September 30, 1980 (45 F.R. 64625), and September 30, 1980 (45 F.R. 64624), by the committee.

(QUO-2-1)

Dated: April 27, 1981.

WILLIAM D. SLYNE
(For Richard R. Rosettie, Acting
Director, Duty Assessment Division).

U.S. DEPARTMENT OF COMMERCE,
INTERNATIONAL TRADE ADMINISTRATION,
Washington, D.C., September 5, 1980.

Committee for the Implementation of Textile Agreements

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C.

DEAR MR. COMMISSIONER: This directive amends, but does not cancel, the directive issued to you on December 20, 1979, by the

chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool, and manmade fiber textile products, produced or manufactured in the Republic of Korea.

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 23, 1977, as amended, between the Governments of the United States and the Republic of Korea; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to prohibit, effective on September 9, 1980, and for the 12-month period beginning on January 1, 1980, and extending through December 31, 1980, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in category 445/446, produced or manufactured in the Republic of Korea in excess of 49,915 dozen.[1]

Wool textile products in category 445/446 which have been exported to the United States prior to January 1, 1980, shall not be subject to this directive.

Wool textile products in category 445/446 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A detailed description of the textile categories in terms of TSUSA numbers was published in the Federal Register on February 28, 1980 (45 F.R. 13172), as amended on April 23, 1980 (45 F.R. 27463), and August 12, 1980 (45 F.R. 53506).

In carrying out the above directions, entry into the United States for consumption shall be construed to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of the Republic of Korea and with respect to imports of wool textile products from the Republic of Korea have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the

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[1] The level of restraint has not been adjusted to reflect any imports after Dec. 31, 1979. Imports during the January, June period of 1980 have amounted to 3,673 dozen in category 445 and 42,390 dozen in category 446.

rulemaking provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

PAUL T. O'DAY,
Chairman, Committee for the Implementation of Textile Agreements.

U.S. DEPARTMENT OF COMMERCE,
INTERNATIONAL TRADE ADMINISTRATION,
Washington, D.C., September 23, 1980.

Committee for the Implementation of Textile Agreements

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C.

DEAR MR. COMMISSIONER: This directive amends, but does not cancel, the directive of December 20, 1979, from the chairman of the Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool, and manmade fiber textile products, produced or manufactured in the Republic of Korea.

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 23, 1977, as amended, between the Governments of the United States and the Republic of Korea; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to prohibit, effective on September 24, 1980, and for the 12-month period beginning on January 1, 1980, and extending through December 31, 1980, entry into the United States for consumption and withdrawal from warehouse for consumption of manmade fiber textile products in category 645/646, produced or manufactured in the Republic of Korea, in excess of 2,717,391 dozen.[1]

The action taken with respect to the Government of the Republic of Korea and with respect to imports of manmade fiber textile products from the Republic of Korea has been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the

[1] The level of restraint has not been adjusted to account for any imports after Dec. 31, 1979.

Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

ARTHUR GAREL,
Acting Chairman, Committee for the Implementation of Textile Agreements.

U.S. DEPARTMENT OF COMMERCE,
INTERNATIONAL TRADE ADMINISTRATION,
Washington, D.C., September 25, 1980.

Committee for the Implementation of Textile Agreements

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C.

DEAR MR. COMMISSIONER: This directive amends, but does not cancel, the directive of December 20, 1979, from the chairman of the Committee for the Implementation of Textile Agreements which directed you to prohibit, effective on January 1, 1980, and for the 12-month period extending through December 31, 1980, entry into the United States for consumption, and withdrawal from warehouse for consumption, of cotton, wool, and manmade fiber textile products, produced or manufactured in the Republic of Korea in certain designated categories.

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 23, 1977, as amended between the Governments of the United States and the Republic of Korea; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed, effective on September 25, 1980, to cancel the import controls established in the directive of December 20, 1979, for categories 314, 320, 331, 350, 410, 459pt. (TSUSA Nos. 700.7510 through 700.7560), 605, 605pt. (TSUSA No. 316.6020), 612, 612pt. (TSUSA Nos. 338.3037 and 338.3038), 669, 669pt. (TSUSA No. 389.6210), 669pt. (TSUSA No. 355.4560), 614, and 631.

The actions taken with respect to the Government of the Republic of Korea and with respect to imports of cotton, wool, and manmade fiber textile products from the Republic of Korea have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary to the implementation of such actions, fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

PAUL T. O'DAY,
Chairman, Committee for the Implementation of Textile Agreements.

U.S. DEPARTMENT OF COMMERCE,
INTERNATIONAL TRADE ADMINISTRATION,
Washington, D.C., September 25, 1980.

Committee for the Implementation of Textile Agreements

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C.

DEAR MR. COMMISSIONER: To facilitate implementation of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 23, 1977, between the Governments of the United States and the Republic of Korea, it would be appreciated if you would count, effective on September 25, 1980, and until further notice, entries for consumption and withdrawals from warehouse for consumption of cotton, wool, and manmade fiber textile products exported from Korea after December 31, 1979, in the following categories: 314, 320, 605, 612, 614, 669, 669pt. (TSUSA No. 355.4560).

Such counting should operate under the same procedures that are used for categories that Customs has been directed to control imports.

This letter will not be published in the Federal Register.

Sincerely,

PAUL T. O'DAY,
Chairman, Committee for the Implementation of Textile Agreements.

U.S. DEPARTMENT OF COMMERCE,
INTERNATIONAL TRADE ADMINISTRATION,
Washington, D.C., September 25, 1980.

Committee for the Implementation of Textile Agreements

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C.

DEAR MR. COMMISSIONER: This directive amends, but does not cancel, the directive issued to you on December 20, 1979, by the chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool, and manmade fiber textile products, produced or manufactured in the Republic of Korea.

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 23, 1977, as amended, between the Governments of the United States and the Republic of Korea; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed, effective on September—, 1980, and for the 12-month period beginning on January 1, 1980, and extending through December 31, 1980, to increase the 12-month level of restraint for manmade fiber textile products in category 604 to 487,-805 pounds.[1] Further, you are directed, effective on October 6, 1980, and for the 12-month period beginning on January 1, 1980, and extending through December 31, 1980, to prohibit entry into the United States for consumption, and withdrawal from warehouse for consumption, of cotton and wool textile products in categories 319 and 443, produced or manufactured in the Republic of Korea, in excess of the following levels of restraint:

Category	*12-month level of restraint* [1]
319	12,000,000 square yards
443	26,704 dozen

Textile products in categories 319 and 443 which have been exported to the United States prior to January 1, 1980, shall not be subject to this directive.

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[1] The levels of restraint have not been adjusted to reflect any imports after Dec. 31, 1979. Imports during the January-July period of 1980 have amounted to 3,143,050 square yards in category 319 and 13,609 dozen in category 443.

Textile products in categories 319 and 443 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A detailed description of the textile categories in terms of TSUSA numbers was published in the Federal Register on February 28, 1980 (45 F.R. 13172), as amended on April 23, 1980 (45 F.R. 27463), and August 12, 1980 (45 F.R. 53506).

In carrying out the above directions, entry into the United States for consumption shall be construed to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of the Republic of Korea and with respect to imports of cotton, wool, and manmade fiber textile products from the Republic of Korea have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

PAUL T. O'DAY,
Chairman, Committee for the Implementation of Textile Agreements.

(T.D. 81-110)

Cotton and Manmade Fiber Textile Products—Restriction on Entry

Restriction on entry of cotton and manmade fiber textile products manufactured or produced in the Republic of Korea

There are published below directives of November 13 and 21, 1980, and December 12, 1980, received by the Commissioner of Customs from the acting chairman, Committee for the Implementation of Textile Agreements, concerning restriction on entry of cotton and manmade fiber textile products in certain categories manufactured or produced in the Republic of Korea. These directives amend, but do not cancel, that committee's directive of December 20, 1979 (T.D. 80-65).

346-391 0 - 81 - 2

These directives were published in the Federal Register on November 17, 1980 (45 F.R. 75733), November 28, 1980 (45 F.R. 79135), and December 18, 1980 (45 F.R. 83309), by the committee.

(QUO–2–1)

Dated: April 27, 1981.

WILLIAM D. SLYNE
(For Richard R. Rosettie, Acting
Director, Duty Assessment Division).

U.S. DEPARTMENT OF COMMERCE,
INTERNATIONAL TRADE ADMINISTRATION,
Washington, D.C., November 18, 1980.

Committee for the Implementation of Textile Agreements

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C.

DEAR MR. COMMISSIONER: On December 27, 1979, the chairman of the Committee for the Implementation of Textile Agreements directed you to prohibit entry for consumption or withdrawal from warehouse for consumption during the 12-month period which began on January 1, 1980, and extends through December 31, 1980, of cotton, wool, and manmade fiber textile products, produced or manufactured in the Republic of Korea, in certain specified categories, in excess of designated levels of restraint. The chairman further advised you that the levels of restraint are subject to adjustment.[1]

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 23, 1977, as amended, between the Governments of the United States and the Republic of Korea; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to permit entry,

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[1] The term "adjustment" refers to those provisions of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of Dec. 23, 1977, as amended, between the Governments of the United States and the Republic of Korea which provide, in part, that: (1) Within the aggregate and applicable group limits, specific levels of restraint may be exceeded by designated percentages; (2) these same levels may be increased for carryover and carryforward up to 11 percent of the applicable category limit; (3) consultation levels may be increased within the aggregate and applicable group limits upon agreement between the two governments; and (4) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

effective on November 18, 1980, and extending through December 31, 1980, of 55,448 dozen of manmade fiber textile products in category 645/6, produced or manufactured in the Republic of Korea and exported on and after January 1, 1980.

The action taken with respect to the Government of the Republic of Korea and with respect to imports of manmade fiber textile products from Korea has been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

ARTHUR GAREL,
Acting Chairman, Committee for the Implementation of Textile Agreements.

U.S. DEPARTMENT OF COMMERCE,
INTERNATIONAL TRADE ADMINISTRATION,
Washington, D.C., November 21, 1980.

Committee for the Implementation of Textile Agreements

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C.

DEAR MR. COMMISSIONER: This directive further amends, but does not cancel, the directive issued to you on December 20, 1979, by the chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool, and manmade fiber textile products, produced or manufactured in the Republic of Korea.

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Cotton, Wool and Man-Made Textile Agreement of December 23, 1977, as amended, between the Governments of the United States and the Republic of Korea; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to prohibit, effective on December 1, 1980, and for the 12-month period beginning on January 1,

1980, and extending through December 31, 1980, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in category 338/339, produced or manufactured in the Republic of Korea, in excess of the following level of restraint:

Category	*12-month level of restraint* [1]
338/339	473, 333

Cotton textile products in category 338/339 which have been exported to the United States prior to January 1, 1980, shall not be subject to this directive.

Cotton textile products in category 338/339 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A detailed description of the textile categories in terms of TSUSA numbers was published in the Federal Register on February 28, 1980 (45 F.R. 13172), as amended on April 23, 1980 (45 F.R. 27463), and August 12, 1980 (45 F.R. 53506).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of the Republic of Korea and with respect to imports of manmade fiber textile products from the Republic of Korea have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

ARTHUR GAREL,
Acting Chairperson, Committee for the Implementation of Textile Agreements.

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[1] The level of restraint for category 338/339 has not been adjusted to reflect any imports after Dec. 31, 1979. Imports in the category during the January–September 1980 period have amounted to 354,299 dozen o. which 162,128 dozen should be charged to category 338 and 192,171 dozen should be charged to category 339.

U.S. DEPARTMENT OF COMMERCE,
INTERNATIONAL TRADE ADMINISTRATION,
Washington, D.C., December 12, 1980.

Committee for the Implementation of Textile Agreements

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C.

DEAR MR. COMMISSIONER: On December 20, 1979, the chairman, Committee for the Implementation of Textile Agreements, directed you to prohibit entry for consumption or withdrawal from warehouse for consumption, during the 12-month period beginning on January 1, 1980, and extending through December 31, 1980, of cotton, wool, and manmade fiber textile products in certain specified categories, produced or manufactured in the Republic of Korea, in excess of designated levels of restraint. The chairman further advised you that the levels of restraint are subject to adjustment.[1]

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977, pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 23, 1977, as amended, between the Governments of the United States and the Republic of Korea; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11651 of January 6, 1977, you are directed, effective on December 12, 1980, to amend the 12-month levels of restraint established for textile products in categories 333/334/335, 433, and 640 to the following:

Category	*Amended 12-month level of restraint*[2]
333/334/335	92,041 dozen of which not more than 49,407 dozen shall be in category 333/334 and not more than 53,476 dozen shall be in category 335.

[1] The term "adjustment" refers to those provisions of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of Dec. 23, 1977, as amended, between the Governments of the United States and the Republic of Korea, which provide, in part, that: (1) Within the aggregate and applicable group limits, specific levels of restraint may be adjusted by designated percentages; (2) these same levels may be adjusted for carryover and carryforward up to 11 percent of the applicable category limit; (3) administrative arrangements or adjustments may be made to resolve problems arising in the implementation of the agreement.

[2] The levels of restraint have not been adjusted to reflect any entries after Dec. 31, 1979.

433	12,625	dozen
640 pt.[3]	4,212,645	dozen
640 pt.[4]	1,769,529	dozen

The actions taken with respect to the Government of the Republic of Korea and with respect to imports of cotton, wool, and manmade fiber textile products from the Republic of Korea have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary to the implementation of such actions, fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

ARTHUR GAREL,
Acting Chairman, Committee for the Implementation of Textile Agreements.

(T.D. 81–111)

Cotton and Manmade Fiber Textile Products—Restriction on Entry

Restriction on entry of cotton and manmade fiber textile products manufactured or produced in Taiwan

There is published below a directive of October 22, 1980, received by the Commissioner of Customs from the acting chairman, Committee for the Implementation of Textile Agreements, concerning restriction on entry of cotton and manmade fiber textile products in certain categories manufactured or produced in Taiwan. This directive amends, but does not cancel, that committee's directive of December 21, 1979 (T.D. 80–66).

This directive was published in the Federal Register on October 27, 1980 (45 F.R. 70959), by the committee.

(QUO–2–1)

Dated: April 27, 1981.

WILLIAM D. SLYNE
(For Richard R. Rosettie, Acting Director, Duty Assessment Division).

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[3] In category 640, only TSUSA Nos. 380.0455, 380.8431, and 380.8433.
[4] In category 640, all TSUSA numbers except those listed in footnote 3.

U.S. DEPARTMENT OF COMMERCE,
INTERNATIONAL TRADE ADMINISTRATION,
Washington, D.C., October 22, 1980.

Committee for the Implementation of Textile Agreements

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C.

DEAR MR. COMMISSIONER: This directive further amends, but does not cancel, the directive issued to you on December 21, 1979, from the chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool, and manmade fiber textile products, produced or manufactured in Taiwan.

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Cotton, Wool and Man-Made Fiber Textile Agreement of June 8, 1978, as amended, concerning textile products from Taiwan, and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed further to amend, effective on October 27, 1980, the 12-month levels of restraint established for categories 333/334/335, 338/339, 340, 341 638, 639, 645/646, and 659pt. to the following:

Category	*Amended 12-month level of restraint* [1]
333/334/335	106, 652 dozen of which not more than 55,855 dozen shall be in category 333/334 and not more than 66,795 dozen shall be in category 335.
338/339	569, 000 dozen
340	656, 737 dozen
341	373, 251 dozen
638	1, 575, 556 dozen
639	5, 205, 207 dozen
645/646	3, 947, 021 dozen
659pt.[2]	3, 010, 925 pounds

The actions taken with respect to the authorities in Taiwan and with respect to imports of cotton and manmade fiber textile products

[1] The levels of restraint have not been adjusted to account for any imports after Dec. 31, 1979.
[2] In category 659, only TSUSA Nos. 703.0500 and 703.1000.

from Taiwan have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary to the implementation of such actions, fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

RONALD I. LEVIN,
Acting Chairman, Committee for the Implementation of Textile Agreements.

(T.D. 81–112)

Cotton and Wool Textile Products—Restriction on Entry

Restriction on entry of cotton and wool textile products manufactured or produced in Malaysia

There are published below directives of November 25, 1980, and December 1, 1980, received by the Commissioner of Customs from the chairman, Committee for the Implementation of Textile Agreements, concerning restriction on entry of cotton and wool textile products in categories 446 and 335 manufactured or produced in Malaysia. These directives amend, but do not cancel, that committee's directive of December 11, 1979 (T.D. 80–52).

These directives were published in the Federal Register on December 2, 1980 (45 F.R. 79864), and December 8, 1980 (45 F.R. 80862), by the committee.

(QUO–2–1)

Dated: April 27, 1981.

MICHAEL GREENHUT
(For Richard R. Rosettie, Acting Director, Duty Assessment Division).

U.S. DEPARTMENT OF COMMERCE,
INTERNATIONAL TRADE ADMINISTRATION,
Washington, D.C., November 25, 1980.

Committee for the Implementation of Textile Agreements

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C.

DEAR MR. COMMISSIONER: This directive further amends, but does not cancel, the directive of December 11, 1979, from the chair-

man, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool, and manmade fiber textile products, produced or manufactured in Malaysia.

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of May 17 and June 8, 1978, as amended, between the Governments of the United States and Malaysia; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to prohibit, effective on December 3, 1980, and for the 12-month period beginning on January 1, 1980, and extending through December 31, 1980, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in category 446, produced or manufactured in Malaysia, in excess of the following level of restraint:

Category	*Adjusted 12-month level of restraint* [1]
446	18,614 dozen

The actions taken with respect to the Government of Malaysia and with respect to imports of wool textile products from Malaysia have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

PAUL T. O'DAY,
Chairman, Committee for the Implementation of Textile Agreements.

U.S. DEPARTMENT OF COMMERCE,
INTERNATIONAL TRADE ADMINISTRATION,
Washington, D.C., December 1, 1980.

Committee for the Implementation of Textile Agreements

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C.

DEAR MR. COMMISSIONER: This directive further amends, but does not cancel, the directive of December 11, 1979, from the chair-

[1] The level of restraint has not been adjusted to reflect any imports after Dec. 31, 1979.

man, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool, and manmade fiber textile products, produced or manufactured in Malaysia.

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of May 17 and June 8, 1978, as amended, between the Governments of the United States and Malaysia; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to prohibit, effective on December 5, 1980, and for the 12-month period beginning on January 1, 1980, and extending through December 31, 1980, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in category 335, produced or manufactured in Malaysia, in excess of the 20,659 dozen.[1]

The actions taken with respect to the Government of Malaysia and with respect to imports of cotton textile products from Malaysia have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

PAUL T. O'DAY,
Chairman, Committee for the Implementation of Textile Agreements.

(T.D. 81–113)

Cotton Textile Products—Restriction on Entry

Restriction on entry of cotton textile products manufactured or produced in Singapore

There is published below a directive of November 26, 1980, received by the Commissioner of Customs from the chairman, Committee for the Implementation of Textile Agreements, concerning restriction on entry of cotton textile products in categories 317 and

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[1] The level of restraint has not been adjusted to reflect any imports after Dec. 31, 1979.

341 manufactured or produced in Singapore. This directive amends, but does not cancel, that committee's directive of December 14, 1979 (T.D. 80–50).

This directive was published in the Federal Register on December 2, 1980 (45 F.R. 79865), by the committee.

(QUO–2–1)

Dated: April 27, 1981.

RICHARD R. ROSETTIE,
Acting Director,
Duty Assessment Division.

U.S. DEPARTMENT OF COMMERCE,
INTERNATIONAL TRADE ADMINISTRATION,
Washington, D.C., November 26, 1980.

Committee for the Implementation of Textile Agreements

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C.

DEAR MR. COMMISSIONER: On December 14, 1979, the chairman of the Committee for the Implementation of Textile Agreements directed you to prohibit entry for consumption, or withdrawal from warehouse for consumption during the 12-month period which began on January 1, 1980, and extends through December 31, 1980, of cotton, wool, and manmade fiber textile products, produced or manufactured in Singapore, in certain specified categories, in excess of designated levels of restraint. The chairman further advised you that the levels of restraint are subject to adjustment.[1]

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of September 21, and 22, 1978, as amended, between the Governments of the United States and Singapore; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to prohibit, effective on December 3, 1980, and for the 12-month period beginning on January 1, 1980, and extend-

[1] The term "adjustment" refers to those provisions of the Bilateral Cotton Textile Agreement of Sept. 21 and 22, 1978, as amended, between the Governments of the United States and the Republic of Singapore which provide, in part, that: (1) Within the aggregate and applicable group limits, specific limits and sublimits may be exceeded by designated percentages; (2) specific levels may be increased for carryover and carryforward up to 11 percent of the applicable category limit; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

ing through December 31, 1980, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in categories 317 and 341, produced or manufactured in Singapore, and in the case of category 317, exported on and after January 1, 1980, in excess of the following adjusted levels of restraint:

Category	*Adjusted 12-month level of restraint* [1]	
317	14,564,615	square yards
341	58,000	dozen

The actions taken with respect to the Government of Republic of Singapore and with respect to imports of cotton textile products from Singapore have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

PAUL T. O'DAY,
Chairman, Committee for the Implementation of Textile Agreements.

(T.D. 81-114)

Cotton Textile Products—Restriction on Entry

Restriction on entry of cotton textile products manufactured or produced in Romania

There is published below a directive of December 17, 1980, received by the Commissioner of Customs from the chairman, Committee for the Implementation of Textile Agreements, concerning restriction on entry of cotton textile products in categories 335 and 338 manufactured or produced in Romania.

This directive was published in the Federal Register on December 23, 1980 (45 F.R. 84841), by the committee.

(QUO-2-1)

Dated: April 27, 1981.

RICHARD R. ROSETTIE,
Acting Director,
Duty Assessment Division.

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[1] The levels of restraint have not been adjusted to reflect any imports after Dec. 31, 1979. Imports in category 317 have amounted to 10,310,040 square yards during the January-September 1980 period.

U.S. DEPARTMENT OF COMMERCE,
INTERNATIONAL TRADE ADMINISTRATION,
Washington, D.C., December 17, 1980.

Committee for the Implementation of Textile Agreements

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C.

DEAR MR. COMMISSIONER: Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Cotton Textile Agreement of January 6 and 25, 1978, as amended, between the Governments of the United States and the Socialist Republic of Romania; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to prohibit, effective on January 1, 1981, and for the 12-month period extending through December 31, 1981, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in categories 335 and 338, produced or manufactured in Romania, in excess of the following levels of restraint:

Category	*12-month level of restraint*
335	36,320 dozen
338	256,000 dozen of which not more than 97,222 dozen shall be in TSUSA Nos. 380.0028, 380.0029, 380.0651, and 380.0652

In carrying out this directive, entries of cotton textile products in the foregoing categories, produced or manufactured in the Socialist Republic of Romania, which have been exported to the United States on and after January 1, 1980, and extending through December 31, 1980, shall to the extent of any unfilled balances, be charged against the levels of restraint established for such goods during the 12-month period beginning on January 1, 1980, and extending through December 31, 1980. In the event the levels of restraint established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this letter.

The levels of restraint set forth above are subject to adjustment according to the provisions of the bilateral agreement of January 6 and 25, 1978, as amended, between the Governments of the United States and the Socialist Republic of Romania, which provide, in part, that: (1) The two governments will consult regarding adjustments in

consultation levels and (2) administrative arrangements may be made to resolve problems arising in the implementation of the agreement. Any appropriate future adjustments under the foregoing provision of the bilateral agreement will be made to you by letter.

A detailed description of the textile categories in terms of TSUSA numbers was published in the Federal Register on February 28, 1980 (45 F.R. 13172), as amended on April 23, 1980 (45 F.R. 27463), and August 12, 1980 (45 F.R. 53506).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of the Socialist Republic of Romania and with respect to imports of cotton textile products from Romania have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

PAUL T. O'DAY,
Chairman, Committee for the Implementation of Textile Agreements.

(T.D. 81-115)

Foreign Currencies—Daily Rates for Countries Not on Quarterly List

Rates of exchange based on rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York for the Brazil cruzeiro, People's Republic of China yuan, Hong Kong dollar, Iran rial, Philippines peso, Singapore dollar, Thailand baht (tical), and Venezuela bolivar

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to part 159, subpart C, Customs Regulations (19 CFR 159, subpart C).

Brazil cruzeiro:	
April 6–7, 1981	$0.013067
April 8–10, 1981	.012773
People's Republic of China yuan:	
April 6, 1981	$0.606061
April 7, 1981	.602446
April 8–9, 1981	.606686
April 10, 1981	.603682
Hong Kong dollar:	
April 6, 1981	$0.187231
April 7, 1981	.187441
April 8, 1981	.187564
April 9, 1981	.186898
April 10, 1981	.186776
Iran rial:	
April 6–10, 1981	Not available
Philippines peso:	
April 6–9, 1981	$0.129366
April 10, 1981	130548
Singapore dollar:	
April 6, 1981	$0.476417
April 7, 1981	.475285
April 8, 1981	.475737
April 9, 1981	.476077
April 10, 1981	.475511
Thailand baht (tical):	
April 6–9, 1981	$0.048379
April 10, 1981	.048193
Venezuela bolivar:	
April 6–10, 1981	$0.232883

(LIQ–03–01 O:C:E)

Dated: April 10, 1981.

KENNETH A. RICH,
Chief, Customs Information Exchange.

(T.D. 81–116)

The Federal Reserve Bank of New York, pursuant to section 522 (c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the

information and use of Customs officers and others concerned pursuant to part 159, subpart C, Customs Regulations (19 CFR 159, subpart C).

Argentina peso:	
April 13–16, 1981	$0.000326
April 17, 1981	.000325
Brazil cruzeiro:	
April 13–14, 1981	$0.012773
April 15–17, 1981	.012522
Chile peso:	
April 13–17, 1981	$0.025667
People's Republic of China yuan:	
April 13, 1981	$0.603682
April 14–15, 1981	.599449
April 16–17, 1981	.595309
Colombia peso:	
April 13–16, 1981	$0.018932
April 17, 1981	.018979
Greece drachma:	
April 13, 1981	$0.018832
April 14–15, 1981	.018904
April 16–17, 1981	.018797
Hong Kong dollar:	
April 13, 1981	$0.185960
April 14, 1981	.186237
April 15, 1981	.186463
April 16, 1981	.185839
April 17, 1981	.185529
Indonesia rupiah:	
April 13–17, 1981	$0.001600
Iran rial:	
April 13–17, 1981	Not available
Israel shekel:	
April 13–14, 1981	$0.107527
April 15–17, 1981	.107991
Peru sol:	
April 13–17, 1981	$0.002469
Philippines peso:	
April 13–17, 1981	$0.130548
Singapore dollar:	
April 13, 1981	$0.473821
April 14, 1981	.472925
April 15, 1981	.472813
April 16, 1981	.473261
April 17, 1981	.472144

South Korea won:	
April 13, 1981	$0.011330
April 14–17, 1981	.001478
Thailand baht:	
April 13–17, 1981	$0.048193
Venezuela bolivar:	
April 13–17, 1981	$0.232883

(LIQ-03-01 O:C:E)

Dated: April 17, 1981.

KENNETH A. RICH,
Chief, Customs Information Exchange.

(T.D. 81-117)

Liquidation of Duties—Customs Regulations Amended

Section 159.34(a), Customs Regulations, relating to currency rates of exchange, amended

TITLE 19—CUSTOMS DUTIES

CHAPTER I—U.S. CUSTOMS SERVICE

PART 159—LIQUIDATION OF DUTIES

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by adding Brazil, Hong Kong, Iran, People's Republic of China, Philippines, Singapore, Thailand, and Venezuela to the list of foreign countries whose currency is converted into equivalent U.S. currency and certified on a quarterly basis, rather than on a daily basis as is now the case. In so doing, Customs will eliminate the necessity of maintaining data and publishing a Treasury decision each week advising the public of the daily rates of exchange for the eight countries.

EFFECTIVE DATE: Effective upon publication in the Federal Register.

FOR FURTHER INFORMATION CONTACT: G. Scott Shreve, Duty Assessment Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229, 202-566-5307.

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SUPPLEMENTARY INFORMATION:

BACKGROUND

In accordance with 31 U.S.C. 372, it is necessary to convert foreign currency into equivalent U.S. currency for the purpose of assessing and collecting duties upon merchandise imported into the United States.

One method of conversion involves using certified quarterly rates of exchange for those countries listed in section 159.34(a), Customs Regulations (19 CFR 159.34(a)). For those countries, Customs publishes in the CUSTOMS BULLETIN, for the quarter beginning January 1, and for each quarter thereafter, the rate or rates first certified by the Federal Reserve Bank of New York for the respective foreign currency for a day in that quarter.

The certified quarterly rate of exchange is used for Customs purposes for any date of exportation within the quarter unless a certified daily rate, as determined by the Federal Reserve Bank of New York and certified to the Secretary of the Treasury, for the date of exportation varies by 5 percent or more from the certified quarterly rate. In that event, Customs publishes in the CUSTOMS BULLETIN a notice of the variation (popularly called a variance), and the rate certified on that date for the applicable country listed in section 159.34(a). The certified daily rate then is used for Customs purposes in connection with merchandise exported on that date.

However, a different procedure is used for the following eight countries: Brazil, Hong Kong, Iran, People's Republic of China, Philippines, Singapore, Thailand, and Venezuela.

The rates of exchange for those countries are converted and certified on a daily basis, rather than on a quarterly basis, as is the case for the countries listed in section 159.34(a). Therefore, in order to inform the importing community of the daily rates of exchange of these eight countries, it is necessary for Customs to publish a separate Treasury decision each week in the CUSTOMS BULLETIN.

After a periodic review of the daily rates of exchange for those eight countries, it became clear that their currencies fluctuate within 2 to 3 percent, that is, within the same 5-percent range as those countries listed on a quarterly basis in section 159.34(a). Therefore, it is appropriate to add the eight countries to the list of countries specified in section 159.34(a).

In so doing, Customs will eliminate the necessity of maintaining data and publishing a Treasury decision each week advising the public of the daily rates of exchange for the eight countries. The importing community will benefit because it will no longer be necessary to check the rates of exchange for the eight countries on a daily basis.

Rather, interested parties need only be apprised of whether there is a variance of 5 percent or more between the certified daily rate and the certified quarterly rate as is presently the case for the countries listed in section 159.34(a). Rates of exchange for countries not listed in section 159.34(a) may be obtained from the Federal Reserve Bank of New York by Customs upon special request.

This document amends the Customs Regulations by adding these eight countries to the list of countries specified in section 159.34(a), whose currency is converted into equivalent U.S. currency and certified on a quarterly basis.

INAPPLICABILITY OF PUBLIC NOTICE AND DELAYED EFFECTIVE DATE REQUIREMENTS

Because this is a minor technical amendment which relieves a burden on the importing community, and is not of particular interest to the general public, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure thereon are unnecessary. Further, for the same reasons, good cause exists for dispensing with a delayed effective date under 5 U.S.C. 553(d).

INAPPLICABILITY OF REGULATORY FLEXIBILITY ACT

This document is not subject to the provisions of sections 603 and 604 of title 5, United States Code, as added by section 3 of Public Law 96–354, the "Regulatory Flexibility Act." That act does not apply to any regulation such as this for which a notice of proposed rulemaking is not required by the Administrative Procedure Act (5 U.S.C. 551 et seq.), or any other statute.

DRAFTING INFORMATION

The principal author of this document was Charles D. Ressin, Regulations and Information Division, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

AMENDMENT TO THE REGULATIONS

Section 159.34(a), Customs Regulations (19 CFR 159.34(a)), is amended by adding the following eight countries in appropriate alphabetical sequence to the list of countries for which the quarterly rate is certified: Brazil, Hong Kong, Iran, People's Republic of China, Philippines, Singapore, Thailand, and Venezuela.

(R.S. 251, as amended, sec. 624, 46 Stat. 759, sec. 522, 46 Stat. 739, as amended (19 U.S.C. 66, 1624, 31 U.S.C. 372))

WILLIAM T. ARCHEY,
Acting Commissioner of Customs.

Approved: April 24, 1981.

JOHN P. SIMPSON,
Acting Assistant Secretary of the Treasury.

[Published in the Federal Register, May 4, 1981 (46 F.R. 24944)]

U.S. Customs Service

Customs Service Decisions

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C.

The following are decisions made by the U.S. Customs Service where the issues involved are of sufficient interest or importance to warrant publication in the CUSTOMS BULLETIN.

DONALD W. LEWIS,
Director,
Office of Regulations and Rulings.

(C.S.D. 81-76)

Drawback: Some Requirements of the Principal-Agent Relationship Established by T.D. 55027(2) and T.D. 55207(1).

Date: February 27, 1975
File: DRA-1-09-R:CD:D GS 202452

MR. WILLIAM J. GRIFFIN,
Regional Commissioner of Customs,
Boston, Mass.

DEAR MR. GRIFFIN: This is in reply to your letter of January 31, 1975, concerning the audit of two drawback claimants.

For drawback to accrue under section 1313(b), a manufacturer must (among other things) use in the manufacture or production of articles both imported duty-paid merchandise and duty-free or domestic merchandise of the same kind and quality. Further, the manufacturer of the exported articles on which drawback is claimed must use in manufacture the imported duty-paid merchandise which is designated as the basis for the claim. It will be noted that the criterion is use, not ownership.

By T.D. 55057(2) and T.D. 55207(1) the concept of use was clarified to include manufacturing through agents. These Treasury decisions describe the principal-agent relationship in the following terms:

T.D. 55027(2) Substitution.—Imported merchandise which is owned by corporation A and furnished by that corporation to corporation B for use by the latter in the manufacture of products for the account of corporation A in accordance with the terms of its contract with corporation B, is used by corporation A within the meaning of section 313(b), Tariff Act of 1930, as amended, and may be designated by that corporation as the basis for the allowance of drawback on articles manufactured by it in compliance with the regulations under section 313(b). Bureau letter dated January 12, 1960. (731.1).

T.D. 55207(1) Substitution.—Articles manufactured by corporation C for the account of corporation A with the use of domestic merchandise owned by corporation A are manufactured by corporation A for the purposes of section 313, Tariff Act of 1930. There may be designated as the basis for drawback claims on such articles under section 313(b), as amended, imported merchandise which is owned by corporation A and is used by corporation B in the manufacture of articles for the account of corporation A, when the domestic merchandise used by corporation C and the imported merchandise used by corporation B are of the same kind and quality. See T.D. 55027(2). Bureau letter dated August 4, 1960. (731.1).

T.D. 55027(2), the older of these Treasury decisions, required a principal proposing to use this procedure to furnish merchandise which he owned to his agent, thus making it clear that a bona fide agency arrangement was contemplated. This follows from the fact that if the imported merchandise is not used by a valid agent of the principal, it cannot be said to have been used by the principal.

T.D. 55207(1) expanded T.D. 55027(2) to include the use of domestic merchandise. Once again a valid agency relationship was contemplated, because without it, the exported articles on which drawback was claimed could not be said to have been manufactured by the principal.

In the two cases you mention, although it is not specifically stated, it would appear that the imported wool was processed by the agents for the principals in full accordance with T.D. 55027(2). Thus it is only the procedure which was used with respect to the manufacture of the exported articles with the use of domestic wool which we need consider.

In the first case A company allegedly purchased wool matchings from B company. However in all respects (B company) continued to act as owner of the matchings. It processed them into wool top,

which top it contracted to sell to a Japanese company prior to the time it allegedly sold the matchings to A company and even billed the Japanese company for the wool top prior to billing A company for the matchings. In attachment A to your letter you outline the facts concerning the "sale" and we shall not repeat them in detail here.

In the second case (A corporation) allegedly sold grease wool to (B corporation) on May 25, 1974, but it also on the same date purchased from (B corporation) the wool top which had been or was to be produced form the grease wool. Here again, as is evident from the statement of facts in attachment B to your letter, the alleged seller, i.e. (A corporation)-acted as if it were the owner of the wool throughout the transaction.

In neither of the above cases do we believe there was a principal-agent relationship as required by T.D. 55027(2) and T.D. 55207(1). In each case there appears to have been an attempt to create a set of facts which would come within the scope of these two Treasury decisions. However, in each case the illusion of an agency relationship is destroyed by the fact that the actual processor of the exported articles operated in reality as the owner of the raw material and finished articles rather than as the agent of the owner. We therefore are of the opinion that in each of the cases the claimant has failed to establish that the exported articles were manufactured by the company which used in manufacture the imported wool designated as the basis for drawback on the claims. Accordingly, drawback should be denied in each instance.

We believe it appropriate to comment at this point with respect to the practice noted here of corporation A purchasing from corporation B domestic wool and then selling back to B the product made by B from the domestic wool. As noted earlier in this letter, T.D. 55027(2) and T.D. 55207(1) contemplated a bona fide agency relationship. Whether there is such a relationship must be determined on the basis of the facts in each case. However, when the facts disclose a transaction of the type described above between corporations A and B, we believe there is an inference that the initial sale was made in order to create a climate for the allowance of drawback rather than to create a valid principal-agent relationship. In such cases we believe additional evidence should be required to establish that there was in fact a valid principal-agent relationship.

We believe that other claims involving these four companies should be audited before being liquidated.

(C.S.D. 81-77)

Classification: Penpoint Assembly Consisting of Plastic Cone, Metal Ball, and Wick

Date: June 25, 1980
File: CLA-2:RRUCGC
062524 c

This ruling concerns the tariff classification of pen parts.

Facts.—The merchandise involved consists of an extended polyamide filament wick approximately 1 inch long, a molded plastic cone, and a small metal ball inserted in the plastic cone. These parts are to be incorporated into roller-ball pens which are classifiable under item 760.05, Tariff Schedules of the United States (TSUS). This office has previously held that this merchandise is classifiable, if the wick is incorporated into the ballpoint unit at the time of importation, under the provision for other parts for articles in item 760.05 and in item 760.40, TSUS, and dutiable at the rate of 1.8 cents each plus 12.5 percent ad valorem.

The inquirer requests that we reconsider our classification of this merchandise both with and without the wick. He maintains that in either case the merchandise is classifiable as other penpoints, in item 760.32, TSUS, and dutiable at the rate of 4.4 cents per gross.

Issue.—Whether the assembly, with or without the wick, is classifiable under the provision for other parts for articles, in item 760.05, in item 760.40, TSUS, or is classifiable under the provision for other penpoints, in item 760.32, TSUS.

Law and analysis.—One argument presented in the past for not considering the instant assembly as a penpoint within the purveiw of the provision for penpoints, in item 760.32, TSUS, is that the ball for a ballpoint pen is the penpoint for that type of pen and is provided for under the provision for balls for ballpoint pens and pencils, in item 760.34, TSUS. In this respect attention is directed to "*Webster's Third New International Dictionary*" which defines a ballpoint pen as "a pen having as the writing point a small steel ball that rotates in its socket and inks itself by contact with an inner magazine of ink.

The inquirer has submitted a letter from a Mr. Forrest F. Beck who is a member and past chairman of the Nomenclature Subcommittee of the Writing Instrument Manufacturer Association Test Methods Committee and who states the following:

> (1) Designation of a product as a "penpoint" infers a capability to deliver ink via a feed system from an ink reservoir to a writing surface.

(2) Neither a ball alone, or a housing alone, is capable of performing the normally recognized function of a penpoint. They must be present simultaneously as an assembly.

We note that not all penpoints deliver ink via a feed system. For example, a penpoint holder that uses a thin convex metal penpoint that is layered to a split point fitting does not function as stated above. In such an article the penpoint itself retains the ink in its cavity when dipped into an inkwell or similar container.

Regardless of how the penpoint receives its ink supply, it is our view that generally an essential characteristic of a penpoint is a capability of delivering ink to a writing surface. Noting that the assembly in issue imported without a wick would not have the capability of delivering ink to a writing surface it is our view that it is not classifiable under the provision for other penpoints, in item 760.32, TSUS.

The legislative history of the tariff provisions in issue which appears on page 407, "*Tariff Classification Study Explanatory Notes*," reads as follows:

> Item 760.32 provides for penpoints other than gold penpoints. This item combines three existing provisions of paragraph 351 under which pens of carbon or plain steel are dutiable at 10 cents per gross. Pens in part or wholly of other metal are dutiable at 14 cents per gross, and any of the foregoing pens with barrel and nib in one piece are dutiable at 10 cents per gross. In item 760.32, the three classifications have been combined and the rate of 10 cents per gross has been assigned thereto. It is believed that imports at the 14 cents per gross rate are negligible, and that the bulk of the imports have been dutiable at the 10 cents per gross rate.
>
> Item 760.34 provides for balls for ballpoint pens and pencils at the rate of $2 per thousand, plus 35 percent ad valorem. These balls are currently classified as parts of fountain pens, dutiable at 60 cents per dozen, plus 34 percent ad valorem. The ad valorem equivalent of this compound rate for balls is said to be in the neighborhood of 2,400 percent. In the Commission's interim report on this project, the tarriff status of balls for ballpoint pens was cited on page 46 as an example of an unintended anomaly in the form of an absolutely prohibitive rate of duty. In order to remove the anomalous result produced by the specific part of the existing rate (5 cents per each ball), the specific part of the proposed compound rate has been set at one-fifth cent per ball. The ad valorem part of the rate (34 percent) has been rounded out to 35 percent. The rate is expressed on a per thousand basis which is the usual unit of quantity for sales of such balls.

It is contended that the legislative history cited above precludes classification of the subject assembly under item 760.32, TSUS, inasmuch as ballpoint pens were not provided for in paragraph 351, Tariff Act of 1930, as amended, which is the predecessor provision to item 760.32, TSUS.

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It is to be noted that paragraph 351, Tariff Act of 1930, as amended, dealt with pens made of carbon, or plain steel, or other metal rather than with penpoints or pen parts. Consequently, we cannot view the cited legislative history as mandating classification of the penpoint assembly under item 760.40, TSUS.

In addition, we find nothing in the legislative history of the provisions involved which warrants the interpretation that the provision for balls for ballpoint pens, in item 760.34, TSUS, covers penpoints for ballpoint pens. As stated before, the term "penpoint" infers a capability to deliver ink to a writing surface. This capability is not possessed by the metal ball alone. For this reason we believe that the assembly in issue with the wick incorporated into the ballpoint unit constitutes a penpoint.

Holding.—The assembly consisting of a plastic cone, metal ball, and a wick incorporated therein is classifiable under the provision for other penpoints, in item 760.32, TSUS. The same assembly without the wick is classifiable under item 760.40, TSUS.

(C.S.D. 81–78)

Classification: Whether Fabric Labels on Women's Overalls Constitute Ornamentation

Date: June 29, 1980
File: CLA-2:RRUCGC
064320 PR

This is in reply to your letter of January 10, 1980, concerning the tariff status of certain garments with a particular label attached. The garments are women's short overalls which you state are known as shortalls.

No sample was submitted. However, drawings of the garments to be imported accompanied your letter together with a sample of the label to be used. The garments are overall-like garments with legs that end slightly below the crotch area. According to the drawings, each garment has a large patch pocket on the bib portion, two front slash pockets, a front fly, two rear patch pockets, and suspenders. A label will be centered on the bib patch pocket and also at the juncture of the suspender straps on the rear of the garment. The rectangular-shaped black fabric label is approximately 2½ inches by 1¼ inches. All the words on that label are spelled out in plain block gold-colored capital letters as follows: (1) The first line contains the word "Washington" in letters approximately five-sixteenths inch high; (2) the second line contains the words "Dee Cee" in letters approximately three-sixteenths inch high; and (3) line three contains the words "by Washington Mfg. Co." in letters one-eighth inch high.

Since no sample of the merchandise to be imported was submitted, this ruling is applicable only with regard to whether the labels on the described garment constitute ornamentation. Considering the size and styling of the garment, the size of the labels, and the fact that more than one label is attached to the garment, the garment will be classified under the ornamented provisions of the tariff schedules, under the provision for other women's or girls' ornamented wearing apparel, of cotton, in item 382.00, Tariff Schedules of the United States (TSUS), with duty, depending on the country of origin, either at the column 1 rate of 35 percent ad valorem or at the column 2 rate of 90 percent ad valorem. Products of those countries listed in general headnote 3(e), TSUS, copy enclosed, are dutiable at the column 2 rates of duty. Products of all other countries are dutiable at the column 1 rates of duty.

(C.S.D. 81-79)

Classification: Tobacco Stems Returned Under Separate Package

Date: July 18, 1980
File: CLA-2:RRUCSC
064639 AI
063440
063328
038641

This is in reply to your letter of March 17, 1980, regarding the classification of tobacco stems resulting from a stemming operation performed in the Dominican Republic under the provisions of item 806.20, Tariff Schedules of the United States (TSUS).

You state that the stems resulting from the stemming process generally remain whole (bayonet type) and in this condition are bulky, difficult to handle, and require special packaging. In effect, you want to return part of a complete article exported for alterations under item 806.20, TSUS, separately, and under a different provision of law.

It is not disputed that the tobacco was orginally exported as full leaves for the purpose of undergoing the stemming operations. The stemming operation has consistently been held an alteration under item 806.20, TSUS.

The tobacco leaves in the present case were sent abroad for alteration. The exporter may not sever the article, claiming that only part of it has been altered and obtain duty-free entry of the other part claiming that it has not been improved in condition or advanced in value. The ramifications of allowing entry under this procedure obviously contradict the intention of the exemption. Under this pro-

cedure, a complex and valuable article could be exported to undergo repairs or alterations. Once altered, the article could be severed, however artificially, into parts which have obviously been altered and parts which allegedly have not, with only the former being subject to duty. Preventing such segregation was the object of headnote 2(c), subpart B, part 1, schedule 8, which states that the proper basis for assessing duty is the rate applicable to the entire article.

> The duty upon the value of the change in condition shall be at the rate which would apply to the article itself, as an entirety, without constructive segregation of its components, in the condition as imported if it were not within the purview of this subpart * * *

The same article must be exported and returned. The only divergences allowed under item 806.20, TSUS, are those resulting from the repairs and alterations. Thus, if a new article is produced (*A. D. Deringer, Inc.* v. *United States*, 385 F. Supp. 518) or if the article is sent abroad to undergo repairs or alterations but actually undergoes more than repairs or alterations (*U.S.* v. *Merkowitz*, Abstract 40592 (1943)) it may not return under item 806.20, TSUS.

It is clear from the language of the provision, and from its legislative history, that item 806.20, TSUS, is applicable only to importations where the imported goods can be readily identified as the same articles, though repaired or altered, as those exported.

In order to aid this identification, section 10.8, Customs Regulations, has been promulgated. This section prescribes strict procedures whereby the articles are registered at the time of exportation (sec. 10.8(a)) and the person performing the repairs or alterations declares that the articles were received by him for the sole purpose of performing the repairs or alterations, and that no substitution of other articles has been made (sec. 10.8(e)).

Accordingly, the leaves and stems of the stemmed tobacco must be returned together in the same shipment under item 806.20, TSUS, in compliance with section 10.8, Customs Regulations.

(C.S.D. 81-80)

Vessels: Denial of Remission of Duties Assessed Under 19 U.S.C. 1466 on Foreign Repairs Resultant of a Single Act of Negligence

Date: August 25, 1980
File: VES-13-15/
VES-13-18-RRUCDC
104542 PH

This is in reference to the petition for partial review of the district director's decision in denying relief from vessel repair duties assessed

on repairs performed abroad on the (vessel name). The vessel was repaired in Japan between the dates of October 28, 1978, and February 23, 1979. A vessel repair entry (No. 134621) was filed on March 12, 1979, when the vessel arrived in San Francisco. An application for relief from vessel repair duties was filed, pursuant to section 4.14(e), Customs Regulations, with you on April 18, 1979. By memorandum VES–13–O:CV:LIQ LC dated July 11, 1979, you requested our advice concerning that application. In response, we ruled (ruling letter VES–13–18–R:CD:C 104098 JL, Aug. 27, 1979) that: (1) The cost of foreign repairs precipitated by the negligent acts of a second assistant engineer, an officer, is not subject to remission under 19 U.S.C. 1466(d)(1), and (2) repairs to the vessel's boilers accomplished prior to November 9, 1978, were ineffective and of no value to the vessel and, accordingly, are not dutiable as repairs.

The owner of the vessel, through counsel, has filed a petition under section 4.14(k), Customs Regulations, seeking review of that portion of our ruling which held a second assistant engineer to be an officer and the cost of foreign repairs precipitated by his negligent acts not to be subject to remission under 19 U.S.C. 1466(d)(1).

The underlying facts are not in dispute. The facts pertinent to this petition, as stated in our earlier ruling, are as follows:

> The second assistant engineer improperly transferred fuel from the double bottom tanks to the port settler in that he improperly shifted the manifold valves so that fuel was allowed to move from the starboard settler back to the double bottom fuel tanks. This in turn caused the starboard settler tank to run dry which caused both boiler fires to go out for lack of fuel. It is alleged that at that point the second assistant engineer should have shut down the main engine throttle in order to prevent the vessel's automatic combustion control from opening the forced draft air vents. This omission resulted in a blast of cold air being introduced into the boilers which were then at their full steaming temperature of approximately 2,000° to 3,000° Fahrenheit. This resulted in a thermal shock which caused the generating tubes to shrink, which in turn allegedly caused fractures and severe leaks.
>
> It is also alleged that the second assistant engineer in failing to shut down the vessel's evaporators following the loss of the boiler fires allowed vacuum to be created by the loss of steam pressure which in turn pulled seawater through the condenser tubes into the boiler feed water tank. It is claimed that this seawater contaminated the feed water system and when an attempt was later made to relight the boilers and bring them on line, salt contamination and other deposits were left in the superheater tubes. It is alleged that these deposits in the superheater tubes interfered with the normal cooling process of the system thus causing overheating and subsequent failure of superheater tubes in the boilers.

> Petitioner claims that the second assistant engineer was on his first voyage aboard the vessel and it was the first time that he had sailed for the company. His capacity was that of a relief engineer and the company states that it had no prior opportunity to observe his competence or diligence. Petitioner claims that the company was unable to exercise any discretion or control in employment of the second assistant engineer because under the terms of its collective bargaining agreements it must accept any man dispatched from a union hiring hall, provided he is equipped with a valid U.S. Coast Guard license. The company's position is therefore that the negligence of the second assistant engineer was neither foreseeable nor avoidable.
>
> The petitioner does state, however, that at all times the second assistant engineer was in control of the relevant equipment and should have, but did not, operate the equipment properly.

The petitioner does not disagree with our statement of the rule as to negligence in vessel repair cases. (quoted from ruling letter VES–13–02–R:CD:C 103358 JL, April 28, 1978) as being:

> (a) single act of negligence on the part of an ordinary crewmember is tantamount to a casualty; whereas the negligence of a responsible member of the crew, or crewmembers' neglect over an extended period of time is not to be consider a casualty within the meaning of 19 U.S.C. 1466(b)(1) (since redesignated as sec. 1466(d)(1)).

The petitioner accepts this rule for determining whether negligence should be a grounds for remission in vessel repair cases. However, he disagrees with our determination, based upon 46 U.S.C. 224a(3), that a licensed second assistant engineer is an officer rather than an ordinary crewmember and acts of negligence on his part are not considered casualties under 19 U.S.C. 1466. (Sec. 224a(3) of title 46 provides for the licensing of officers, including assistant engineers.) The petitioner proposes that a crewmember's status as a responsible member of the crew should depend upon a case-by-case factual analysis. In particular, the petitioner contends that the role of a second assistant engineer "does not justify an automatic presumption that his conduct is always the type that is authorized by the owner of the vessel, that the owner of the vessel could reasonably have become aware of his level of competence (especially on his first voyage), or that his negligence should for any reason be imputed to the owner." The petitioner concludes by contending that the second assistant engineer's negligence can in no way be imputed to the owner of the vessel, or to its chief officers.

In our review of this matter we have found several authorities, in addition to 46 U.S.C. 224a(3), to support our ruling that a second assistant engineer is a responsible member of the crew of a vessel. In *Alpha Steamship Corporation, et al.* v. *Cain*, 281 U.S. 642 (1930),

the Supreme Court imputed to the owner of a vessel the negligence of a second assistant engineer in striking a fireman and causing injury.

In a ruling letter to the Collector of Customs, Los Angeles (212.6, June 8, 1949), the Acting Commissioner of Customs stated:

> [t]he officers of the vessel are considered to have control of the ship at all times and negligence on their part is not considered by the Bureau to be a casualty within the purview of section 466 of the tariff act.

The negligence under consideration was on the part of "* * * the third engineer of the vessel in furnishing incorrect advice to the chief engineer".

Section 1466 is a protective tariff intended by the Congress to reserve to U.S. shipyards those repairs and equipment purchases made by U.S. vessels. Customs interprets section 1466 to give the widest possible effect to its protective provisions. 33 Op. Atty. Gen. 432. It is our opinion that our application of section 1466 in this case is consistent with the intent of section 1466.

We have reviewed the file and considered the petition submitted on behalf of the vessel owner. Based upon the authorities discussed in this letter, we affirm ruling letter VES–13–18–R:CD:C 104098 JL, dated August 27, 1979. Please advise the petitioner of our decision.

(C.S.D. 81–81)

Drawback: Commingling of Foreign and Domestic Orange Juice Concentrates as a Manufacturing Process for Drawback

Date: September 4, 1980
File: DRA–1–R:CD:D NK 210693

Issue.—Whether the blending (or commingling) of imported concentrated orange juice for manufacturing with another orange concentrate to change the degree brix of the imported concentrate constitutes a manufacturing process for drawback.

Facts.—A processor imports concentrated organge juice of 65° brix that meets the standard of identity of the Food and Drug Administration and the grade A standard of quality of the U.S. Department of Agriculture for concentrated orange juice for manufacturing (21 CFR 146.153 and 7 CFR 2852.2222).

The processor proposes to blend (or commingle) the imported concentrate with another orange concentrate of 58° brix that also meets

the same standards of identity and quality as the imported concentrate to produce a concentrate of 61.6° brix.

Law and analysis.—Under the substituted drawback law (19 U.S.C. 1313(b)), the imported merchandise must be of the same kind and quality as the substituted domestic merchandise and used in the manufacture of articles. New and different articles of commerce must emerge from the manufacturing process.

The two concentrates described, although differing slightly in degree brix, are used interchangeably by the citrus industry in the manufacture of other orange juice products and meet the same kind and quality requirements of the drawback law.

Thus, the mere blending or commingling of one concentrate with another concentrate of the same kind and quality does not constitute a manufacturing process for drawback.

Alternatives.—Concentrated orange juice for manufacturing of approximately 65° brix may lack essential oils and flavoring components necessary to meet the needs of a customer of a processor, such as a dairy, to prepare a salable reconstituted juice by merely mixing the concentrate with water. The addition by a blending process of essential oils and flavoring components to a concentrate that lacks them would be considered a manufacture or production for drawback. Such a manufacturing process may be used to control the desired degree brix of a concentrate.

The use of fresh juice to cutback the degree brix of concentrated orange juice for manufacturing is another manufacturing process for drawback.

Holding.—The mere blending (or commingling) or concentrated orange juice for manufacturing with another concentrate of the same kind and quality to change degree brix is not a manufacturing process for drawback.

(C.S.D. 81–82)

Warehouse: Liability for Duties on Stolen Merchandise

Date: September 5, 1980
File: WAR–1–RRUCDB
211651 WR

Issue.—Whether the consignee of warehoused merchandise or the proprietor of the bonded warehouse in which the merchandise is stored is liable for the payment of duty on that merchandise if the merchandise is stolen from the warehouse?

Facts.—No facts were presented.

Law and analysis.—Under section 483, Tariff Act of 1930, as amended (19 U.S.C. 1483), the consignee is considered to be the owner of imported merchandise. Section 484, Tariff Act of 1930, as amended (19 U.S.C. 1484), requires the consignee to make entry. Section 505, Tariff Act of 1930, as amended (19 U.S.C. 1505), implies that it is the responsibility of the consignee to pay the required duties. Section 557, Tariff Act of 1930, as amended (19 U.S.C. 1557) clearly imposes an obligation to pay any duty due on withdrawal on the person who has a right to withdraw warehoused merchandise. Sections 101.1(K), 141.20, and 144.31, Customs Regulations (19 CFR 101.(K), 141.20 and 144.31), implement these statutes by clearly stating that the importer of record, the actual owner (if a superseding bond and declaration is filed), or a lawful transferee of the right to withdraw warehoused merchandise is the person who is primarily liable for the payment of duty on warehoused merchandise.

In order to secure performance of that obligation, the relevant bond forms such as the Warehouse Entry Bond (Customs form 7555), the General Term Bond For Entry Of Merchandise (Customs form 7595), and the Superseding Bond (Customs form 7595) contain an agreement to pay lawful duty due on warehoused merchandise.

Under section 555, Tariff Act of 1930, as amended (19 U.S.C. 1555), the owner or lessee of a bonded warehouse is required to give a bond to secure the Government against any loss or expense connected with or arising from the deposit, storage, or manipulation of merchandise in the warehouse. The Proprietor's Warehouse Bond (Customs form 3581) prohibits the removal of any merchandise from the warehouse except under a lawful permit and in the presence of a Customs officer. If there is a breach of that condition, the proprietor agrees to pay any duty, tax, and charge due on the unlawfully removed merchandise. If the duty on the removed merchandise cannot be established, the bond sets a liability for liquidated damages of up to $500 on each removed package. It is clear that the bond language merely follows the dictates of 19 U.S.C. 1555. That is, if merchandise is missing from a warehouse, and the circumstances are such that the Government would suffer a loss of duty as a result, the properietor is responsible for making good on the loss. Nevertheless, the primary responsibility to pay any duty due remains with the importer, actual owner, or transferee, as the case may be. If the amount of the loss is known, as in the case of missing merchandise on which the duty has been ascertained, then the warehouse propietor's liability is measured by that amount. If the amount of loss is unknown, as in the case of missing merchandise on which the duty has not been ascertained, it would be extremely difficult for the Government to prove the amount of the loss suffered. In order to avoid this difficulty, the bond provides

for liquidated damages. This bond language has been unchanged since at least as early as March 1955.

A comparison of the bond guarantees to pay duty in Customs forms 7555, 7595, and 7601 with the provision to pay duty in Customs form 3581 indicates that the latter is in reality more in the nature of damages for a failure to properly perform rather than an obligation to pay duty. Duty is imposed by reason of importation and accrues on importation, as provided in section 141.1, Customs Regulations (19 CFR 141.1). The wording of Customs form 3581 regarding the obligation to pay duty is unrelated to the event of importation; the obligation to pay arises only if the proprietor fails to properly keep the merchandise in the warehouse.

The decision in C.I.E. 686/59 of May 4, 1959, correctly states the different obligations of an importer who warehouses merchandise and the warehouse proprietor. It is true that the provision in Customs form 3581 imposes a liability to pay damages for a loss even though the loss or theft was not due to the fault of the proprietor. In C.I.E. 686/59 Headquarters determined, as a matter of policy, not to enforce that provision unless there was a showing of negligence by the warehouse proprietor. Because the file on C.I.E. 686/59 could not be found, we are unable to determine whether the importer of record paid the duty on the missing merchandise. The text of the decision suggests that the importer of record was able to pay the duty so that, if so paid, there was no loss to the Government within the meaning of 19 U.S.C. 1555.

The decision in Manual Supplement 3260–03 is not contrary to the decision in C.I.E. 686/59. As stated in the first paragraph under the heading "background" the Manual Supplement concerns the warehousing of distilled spirits which are treated differently than all other commodities. By virtue of the act of June 8, 1948, Public Law 612, the substance of which is set forth in headnote 3, part 12, schedule 1, Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202), distilled spirits have been given a favored position with respect to payment of duty. Duty is payable only on the quantity withdrawn from the warehouse for consumption. For all other warehoused merchandise, duty is payable on the quantity entered into the warehouse. Thus, in the case of distilled spirits, the obligation of an importer to pay duty does not accrue on importation. As a statutory exception to 19 CFR 141.1, an importer of distilled spirits is not liable for the payment of duty on spirits that are missing from the warehouse. However, there is a loss to the Government, and that loss is covered by the bond of the warehouse proprietor. Because Manual Supplement 3260–03 concerns a uniquely favored commodity, it does not have general application.

Holding—The decision set forth in C.I.E. 686/59 is affirmed. A consignee, actual owner, or transferee as the case may be, is primarily liable for the payment of duty on warehoused merchandise. The decision in Manual Supplement 3260–03 applies only to the circumstances and merchandise involved.

(C.S.D. 81–83)

Classification: Shoe Bottoming Machine and Molds Classifiable Under Items 678.10 and 680.11, TSUS, Respectively

Date: September 7, 1980
File: CLA–2:RRUCGC
064414 JCH

This is in further response to your letter of January 23, 1980, in which you requested information on the dutiable status of various models of shoe bottoming machines produced by (company name) a West German manufacturer. In a previous ruling dated March 24, 1964 (T.D. 56190 (184), 99 Treas. Dec. 347), we held that the (company name) automatic bottoming machine was classifiable under the provision for shoe machinery in item 678.10, Tariff Schedules of the United States (TSUS), which carries a free rate of duty.

You currently requested extension of the free rate of duty to (name) models 701, 702, 703, 704, 711, 712, 713, 714, 721, 722, 723, 724, 725, 726, 752, 521, 522, 523, 524, 525, and 526. All of these models are similar to the 701 in that they incorporate lasts and last carriers for the direct soling of uppers, thereby, producing complete footwear. They are also multistation rotary machines with as many as 12 stations. However, it is not clear from the literature provided whether the models which are available with as few as two stations are also rotary types.

The model 702 differs from the 701 in that it has the capability for molding a toe cap. The 703 and the 704 primarily differ in that they can perform bicolored molding. The 752 is a simpler semiautomatic machine which can use single wood or plastic lasts. These machines use an extruder or reciprocating screw injection and are primarily for use with PVC plastics. The models 711 through 714 offer similar options and are primarily for rubber injection molding.

Models 721 through 726 have programmable memory control systems and are also for molding PVC and other thermoplastics. Model 520 through 526 are similar machines for use with polyurethane.

It is our opinion that the described machines are specially adapted to the production of footwear by virtue of the lasts and last carriers.

Accordingly, they are a class or kind of machine chiefly used in the production of footwear and entitled to a free rate of duty under item 678.10. In view of this classification, the molds used with the machines for making footwear are also entitled to a free rate of duty under the provision for shoe machinery molds in item 680.11, TSUS.

(C.S.D. 81-84)

Classification: Injection Molding Machines for Shoe Manufacture and Component Molds Classifiable Under Items 678.10 and 680.11, TSUS, Respectively

Date: September 8, 1980
File: CLA-2:RRUCGC
064512 JCH

This is in further response to your letter of February 25, 1980, concerning the tariff classification of the (company name) injection molding machine. In our previous correspondence in this matter dated February 14, 1975, as amended by our letter of April 19, 1977 (file No. 036567), we classified the machine under the provision for machines for molding or otherwise forming rubber or plastic articles in item 678.35, Tariff Schedules of the United States (TSUS), and classified the molds under the provision for molds used for rubber or plastics in item 680.12, TSUS. You now request a reconsideration of this matter and claim the molding machine and the molds are entitled to free rates of duty under the provisions for shoe machinery in item 678.10. TSUS, and shoe machinery molds in item 680.11, TSUS.

You describe the (device) as a two-station molding machine which plasticizes solid or expandable thermoplastic rubber, PVC, and other compounds. It also has a two color capability. You state that the process involves production of complete footwear in one operation. The machine incorporates lasts and last carriers.

In our decision rendered on Internal Advice Request No. 138/75, Supp. 1 (file No. 040567), we reviewed the factors which should be considered in determining eligibility for duty-free entry under item 678.10. It was our decision that duty-free entry would be accorded under this provision to machines which have special features or mechanisms which set them apart from general purpose plastic injection molding machines and preclude their use in the United States in the production of articles other than shoes and parts thereof. It is now our opinion that lasts and last carriers, such as those on the (machine), constitute features which specially adapt the machine to the primary use in the United States for the manufacture of footwear. These machines are to be regarded as a class or kind of merchandise separate from machines which do not have such features and which may be used for general injection molding purposes.

Accordingly, our previous ruling, as amended, is hereby revoked, and the (machine) will be classified, in accordance with the views set forth above and in the cited internal advice decision, under item 678.10. The molds for the machine will also be accorded duty-free treatment under item 680.11. However, any liquidations of the (machine) or of molds for it in accordance with the revoked ruling which have become final will not be affected by this decision.

(C.S.D. 81–85)

Vessel Stores, Supplies, and Equipment: Withdrawal of Supplies by One Vessel for Use by Another Vessel

Date: September 15, 1980
File: CON–13–01:RRUEE
712953/713478 BM

This ruling concerns whether fishing vessels on the high seas are entitled to the duty-free exemption for vessel supplies under section 309 of the Tariff Act of 1930, as amended, when such supplies are withdrawn for their use by a supply vessel.

Issue.—Are Japanese fishing vessels located on the high seas entitled to section 309 vessel supplies which were withdrawn for their use by a supply vessel?

Facts.—In the past, each Japanese fishing vessel would call at the U.S. port of entry involved and would withdraw duty-free for its own use supplies, such as liquor, food stuffs, and fuel, pursuant to section 309 of the Tariff Act of 1930, as amended. A Japanese fishing consortium has now outfitted two supply vessels whose sole purpose is to take supplies to these fishing vessels. This will enable the Japanese fishing vessels to remain on the high seas for longer periods of time.

The District Director of Customs at the port of entry involved believes that the Japanese fishing vessels should not be entitled to such duty-free supplies because: (1) These supplies were taken out of the United States onboard the supply vessel as cargo, (2) the fishing vessels are located on the high seas, and therefore, in the opinion of the district director, since the transfer takes place outside of the United States, such transfer is outside of the jurisdiction of section 309 of the Tariff Act, and (3) Customs at the port of departure does not know the amount of supplies that are being withdrawn for each vessel.

Law and Analysis.—Section 309 of the Tariff Act of 1930, as amended (19 U.S.C. 1309), in pertinent part, provides that supplies

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for vessels employed in the fisheries or actually engaged in foreign trade may be withdrawn duty-free.

T.D. 49815(4), in effect, provided that supplies on one vessel may be withdrawn under section 309 of the Tariff Act of 1930, as amended, and the pertinent Customs Regulations, for supplies of another vessel engaged in a proper class of trade. In this connection, we have ruled that a vessel engaged in foreign trade may withdraw supplies, not only for itself, but for another vessel engaged in foreign trade. Also, a fishing vessel has been authorized to withdraw supplies for another fishing vessel.

Customs has ruled that lightering vessels carrying merchandise from a port of the United States to a place outside of the United States, even if it be to a vessel on the high seas, are engaged in foreign trade and therefore entitled to withdraw duty-free supplies for themselves under section 309 of the Tariff Act. (See ORR Rulings 712892 BM dated June 4, 1980, 305065 BM dated Dec. 8, 1977, and 304866 BM dated Sept. 12, 1977). In the latter two rulings mentioned, Customs stated that super tankers located on the high seas, or even off the coast of Panama, would be entitled to such supplies, withdrawn on their behalf by the lightering vessels involved.

In each instance, the lightering vessels at time of withdrawal provide Customs with documentation setting forth the amount of supplies that are withdrawn for themselves and the amount withdrawn for the super tankers located on the high seas. If for some reason the amount of supplies delivered to the super tankers deviates from the amount provided to Customs at the time of withdrawal, Customs at the port of departure is subsequently informed by the submission of a document certified by the master of the vessel on the high seas as to the actual amount received, The Japanese fishing consortium, in this case, has informed us that they are able to provide Customs at the time of withdrawal with the statement of the eligible fishing vessels which will be receiving the supplies and the amount of supplies intended to be received by each. Subsequently, any deviations from the intended disposition will be submitted to the district director at the port of departure. In addition, statements by the master of each individual vessel certifying the amount of supplies received and consumed on each eligible vessel will be provided.

Customs has thus permitted a vessel engaged in foreign trade to withdraw bonded supplies under section 309 of the Tariff Act for another vessel engaged in foreign trade, take the bonded supplies out to that vessel on the high seas, and there transfer such supplies to that vessel, provided at the time of withdrawal Customs is informed as to the quantity of merchandise being received by the vessel on the high seas. We do not see any reason why this same procedure should not also be permitted for fishing vessels.

However, in this instance, we have two additional circumstances. First: The initial vessel is withdrawing supplies for more than one additional vessel. The main criterion in these cases is that Customs is informed for whom the supplies are being withdrawn at the time of withdrawal. For example, if the initial vessel is withdrawing supplies for 12 vessels and Customs is aware that all 12 vessels qualify and is informed at the time of the withdrawal of the amount each is receiving, this is sufficient.

Second: In each instance where Customs has permitted one vessel to withdraw supplies for another, the vessels involved have been of the same class. For example, a vessel engaged in foreign trade has been permitted to withdraw supplies for another vessel engaged in foreign trade; a fishing vessel has been permitted to withdraw supplies for another fishing vessel. In this instance, we have a vessel engaged in foreign trade withdrawing supplies for fishing vessels.

A careful review of the applicable statutes, regulations, and relevant rulings reveals no law or policy reason prohibiting the transfer of bonded supplies from a vessel engaged in foreign trade to a fishing vessel or vessels. In fact T.D. 49815(4) provides that supplies of one vessel may be withdrawn for supplies of another "engaged in a proper class of trade," and appears to us to be broad enough to cover this situation. We believe the latter rulings covering transfer of supplies under section 309 of the Tariff Act happened to involve vessels of like category. We believe that it is sufficient if the vessels involved are entitled to bonded supplies under section 309 of the Tariff Act.

Holding.—The Japanese fishing vessels located on the high seas are entitled to section 309 vessel supplies which were withdrawn for their use by a supply vessel, provided Customs is informed at the port of departure as to the quantity each vessel will be receiving. The supply vessel, itself, is entitled to section 309 vessel supplies for its own use since it is considered to be engaged in foreign trade.

(C.S.D. 81–86)

Transaction Value: Dutiability of Quota Payments

Date: September 18, 1980
File: CLA–2:RRUCV
542169 TLL
TAA #6

This is in reply to your letter dated June 30, 1980, concerning the dutiability of certain quota payments under section 402 of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979.

You have asked about the dutiability of quota payments in the following three circumstances. First the quota is purchased by either the manufacturer or importer from an unrelated third party. The importer will then place a second purchase order with the quota holder at a sum which reflects the original contract price of the goods to the manufacturer plus a sum for the quota. The quota holder becomes the shipper on the documentation. A letter of credit is opened by the importer to the shipper at that higher amount and the shipper, in turn remits moneys representing the original contract price directly to the manufacturer for payment of the goods, receiving written proof of payment, therefore retaining the remainder as quota charge.

In the second circumstance, the manufacturer essentially prepays the quota and passes the quota charge along to the importer.

The third type of transaction is one in which the importer purchases its own quota from a party unrelated to it or the manufacturer.

You submit that none of the payments made by the importer constitutes dutiable value for the imported merchandise. We agree with your conclusions where the quota payments are made to an unrelated third party and where they are made by the buyer to the quota holder who is unrelated to either the buyer or the seller; however, with regard to the situation where the quota payments are prepaid by the manufacturer, it is our position that such payments are part of the price actually paid or payable for the imported merchandise. See section 402(b)(4)(A), wherein it is stated:

> (A) The term "price actually paid or payable" means the total payment (whether direct or indirect, or exclusive of any costs, charges, or expenses incurred for transportation, insurance, and related services incident to the international shipment of the merchandise for the country of exportation to the place of importation in the United States) made, or to be made, for imported merchandise by the buyer to, or for the benefit of, the seller.

In this regard, it is the position of the Customs Service that all moneys paid to the foreign seller are part of the price actually paid or payable for the imported merchandise. Thus, even if the seller is prepaying expenses on behalf of the buyer, those expenses which are then reimbursed by the buyer to the seller will be treated as being part of the price actually paid or payable of the imported merchandise.

(C.S.D. 81–87)

Value: Proper Method of Invoicing To Insure Bona Fide Buying Commissions Remain Nondutiable

Date: September 29, 1980
File: CLA–2:RRUCV
542141 BG
TAA #7

DEAR ———: This is in response to your letter, dated May 27, 1980, in which you request a ruling as to the proper method of invoicing in order to insure that bona fide buying commissions will remain nondutiable under section 402, Tariff Act of 1930, as amended by the Trade Agreements Act of 1979.

The specific situation for which you request a ruling occurs when, as a matter of convenience, a commercial invoice (and Special Customs Invoice) designates the buying agent as the seller of the merchandise. This situation most frequently occurs when the importation involves shipments from several manufacturers which are coordinated and consolidated by a single buying agent. You request that, under the new value law, Customs continue to allow a bona fide buying commission to be deducted from transaction value notwithstanding the fact that a Special Customs Invoice and/or commercial invoice designates the agent as the seller.

Transaction value, which is the primary basis of appraisement under section 402, Tariff Act of 1930, as amended by the Trade Agreement Act of 1979, is defined as the price actually paid or payable for the merchandise when sold for exportation to the United States, plus amounts for the items specifically enumerated in section 402(b)(1). Although selling commissions are one of the items so listed, buying commissions are not included as an item to be added to the price paid or payable. The term "price actually paid or payable" is defined in section 402(b)(4)(A) as:

> The total payment (whether direct or indirect, and exclusive of any costs, charges, or expenses incurred for transportation, insurance, and related services incident to the international shipment of the merchandise from the country of exportation to the place of importation in the United States) made, or to be made, for imported merchandise by the buyer to, *or for the benefit of, the seller.* [Italic added.]

It is clear from the statutory language that in order to establish transaction value one must know the identity of the seller and the

amount paid or payable to him. If the documentation submitted with the entry papers only reflects the purported agent as the seller, Customs has no alternative but to appraise on the basis that the agent is the seller.

Therefore, an invoice or other documentation from the actual foreign seller to the agent would be required to establish that the agent is not a seller and to determine the price actually paid or payable to the seller. Furthermore, the totality of the evidence must demonstrate that the purported agent is in fact a bona fide buying agent and not a selling agent or an independent seller.

While the designation on the Special Customs Invoice is normally considered as evidence of the relationship between the parties, the fact that a purported agent is listed as the seller on the Special Customs Invoice does not necessarily preclude a finding of a buying agency relationship as long as the evidence taken as a whole substantiates such a finding. It should be noted, however, that in both the rulings cited by counsel where Customs has found a buying agency in such situations (R:CV:V RP 061373, dated Aug. 13, 1979, and R:CV:V JAS 541609, dated Jan. 30, 1978), the commercial invoice or the body of the Special Customs Invoice reflected the actual seller of the merchandise. In addition, the totality of circumstances supported the conclusion that the agent was in fact a bona fide buying agent and not an independent seller or the manufacturer's representative.

Under transaction value it is essential that the entry papers reflect the actual seller in order to establish the price actually paid or payable. Accordingly, while a buying agent may be designated as a seller on the Special Customs Invoice as a matter of convenience, an invoice or other documentation must be submitted with the entry papers which reflects the actual seller of the merchandise and the price paid or payable to him. In addition, the totality of the evidence must establish that the agent is in fact a bona fide buying agent.

It is also important to note that while buying commissions cannot be added to the price paid or payable, neither may they be deducted. If the price paid or payable includes a buying commission, it is our opinion that there is no statutory authority for deducting the commission from the price. Therefore, the documentation, which should reflect the facts as they exist, may under the appropriate circumstances show a separate transaction with respect to the buying agent commission.

We hope that these comments will clarify for you the invoicing procedures to be used where a transaction involves a bona fide buying agent. Due to the insufficient detail regarding the prospective transaction, we note that our comments must be of an advisory nature. The actual determination as to the valuation of the imported mer-

chandise will be made by the appraising officer at the port of entry where the merchandise is entered.

(C.S.D. 81–88)

Warehouse Withdrawal: Merchandise Withdrawn and Admitted Into a Foreign-Trade Zone

Date: October 3, 1980
File: FOR–1–02–RRUCDB WR 212021

Issue.—Whether merchandise in a Customs bonded warehouse may be withdrawn from that warehouse and admitted into a foreign-trade zone in other than zone-restricted status?

Facts.—No facts were presented.

Law and analysis.—Section 557(a), Tariff Act of 1930, as amended (19 U.S.C. 1557(a)), provides, in pertinent part, that merchandise in a warehouse may be withdrawn from the warehouse for transportation and rewarehousing at another port or elsewhere, or for transfer to another bonded warehouse at the same port. The inquirer argues that transfer to a foreign-trade zone is within the contemplation of the phrase "or for transportation and rewarehousing at another port or elsewhere." That phrase was added to section 557(a) by the Customs Administrative Act of 1938, section 22(a), 52 Stat. 1087. Senate Report 1465, 75th Cong., 10 (1938), states that the words "'or elsewhere' (added by a Senate committee amendment) will eliminate a possible objection to the withdrawal of goods from warehouse for transportation and rewarehousing in Customs bonded warehouses established elsewhere than within the limits of a port of entry." Since foreign-trade zones had been in existence for 4 years (by virtue of the Foreign-Trade Zones Act of 1934, as amended (19 U.S.C. 81a–u)), at the time of the 1938 amendment of section 557(a), it seems likely that if the Congress intended elsewhere to refer to zones, it would have said so. It is clear from the legislative history that the language was added solely to encompass warehouses outside of port limits and nothing else. Section 146.25(d), Customs Regulations (19 CFR 146.25(d)), implements the statutory language by requiring zone-restricted status for warehoused merchandise that is transferred to a zone.

A second argument is that the situation is comparable to the Customs Service position in a decision published as C.S.D. 79–454. In that decision the Customs Service held that merchandise may be entered into the U.S. Customs territory under a temporary impor-

tation under bond even though there was not a specific provision for such removal in the Customs Regulations. Unlike the regulations, the Customs Service lacks authority to change a statute. Section 557(a) clearly defines the permissible withdrawals that may be made from a Customs bonded warehouse. Also C.S.D. 79–454 did not attempt to change the statutory law regarding temporary importations under bond. That is, the time requirement for entry must be met and once the article is temporarily imported, the requirement for exportation within the statutory period must be satisfied. For example, in order to return such an article to a foreign-trade zone, it would have to be admitted in zone-restricted status in order to satisfy the exportation requirement.

A third argument is that the result could be accomplished by sending the article out of the United States and immediately returning it to a foreign-trade zone. Since exportation is a severance of goods from the mass of things belonging to the United States with an intention of uniting them with the mass of things belonging to some foreign country, it is doubtful that the hypothetical procedure can be considered an exportation for the purpose of satisfying the warehouse bond. *See Swan & Finch Co.* v. *U.S.*, 37 Ct. Cl. 101 (1901), affd. 190 U.S. 143 (1903) and *U.S.* v. *National Sugar Refining Co.*, 39 C.C.P.A. 96, C.A.D. 470 (1951).

Unlike warehoused merchandise which must be withdrawn for consumption or exported within 5 years from the date of exportation, merchandise may stay in a foreign-trade zone indefinitely. To insure satisfaction of the bond requirement for exportation, warehoused merchandise may be admitted into a zone only with zone-restricted status.

Holding.—Merchandise in a Customs bonded warehouse may be withdrawn from that warehouse and admitted into a foreign-trade zone only under zone-restricted status.

(C.S.D. 81–89)

Classification: Lifeline Safety Devices Classifiable as Machines in Item 678.50, TSUS

Date: October 9, 1980
File: CLA-2:RRUCGC
064783 JCH

This decision concerns the tariff classification of lifeline safety devices.

Issue.—The ruling applicant, in effect, has asked for a reconsideration of our letter of January 27, 1975 (file No. 036846), in which we

classified the (company name) spring-loaded fall safety unit under the provision for articles of steel, not specially provided for, in former item 657.20, Tariff Schedules of the United States (TSUS). This provision has been redesignated item 657.25, and the current column 1 rate required for merchandise classifiable under it is 9 percent ad valorem. It is claimed that a similar competing product, the (company name) safety block, is receiving more favorable treatment, viz, classification under the provision for machines, not specially provided for, in item 678.50, TSUS. The current column 1 rate of duty required under this provision is 4.8 percent ad valorem.

Facts.—The safety devices somewhat resemble in shape and use blocks and tackles, except they are enclosed metal articles. The top end of either device is hooked to an overhead support such as a structural member or tripod, or it may be hooked to a horizontal line so that the device can move horizontally with the horizontal movements of the protected worker. A line from the bottom of the typical device is made of nylon or metal cable and is attached to the worker's safety belt. The devices practically instantaneously arrest an accidental fall of the protected worker bringing him to a cushioned stop.

In both the (company name) and (company name) devices, the line is kept taut by spring. When movement of the line reaches a certain acceleration due to a fall, it causes two pawls to be extended and to engage a drum which then revolves within the threaded sides of the case and moves against plates variously described as a friction clutch and brake.

There are different versions of devices which achieve the same results under different trade or model names. In some of the devices, the line is held taught by an external free-swinging weight. In others, a weight, pulley, and endless line system may be employed. Other devices may move vertically with the vertical movements of the protected worker along a track or cable. In a version encompassed by our letter of January 27, 1975, called the (trade name), a fall was arrested by friction action applied directly to the line itself.

Law and analysis.—Resolution of the tariff classification issue set forth at the outset of this decision revolves around whether the safety devices in question are to be regarded as machines. What qualifies as a machine for tariff classification purposes has been discussed by the courts many times without the emergence of a single definition or hard and fast guidelines. However, it can be stated generally that a machine for tariff classification purposes must be commonly known as a machine, or of a class or kind of merchandise commonly known generically as machines. Further, the ability of a device to apply or modify force or speed, to change the direction of or transmit motion, to convert energy from one form to another, or to perform work are

pertinent considerations. *Simon, Buhler & Baumann (Inc.)* v. *United States*, 8 CCPA 273, T.D. 37537 (1918); *United States* v. *J. E. Bernard & Co.*, 30 CCPA 213, C.A.D. 235 (1943); *United States* v. *IDL Mfg. & Sales Corp.*, 48 CCPA 17, C.A.D. 756 (1960).

At first blush, it would appear that the instant articles, or at least the more complex versions of them, easily display the characteristics of machines. In operation, the downward linear motion of the line is converted to rotary motion which is reconverted into the linear motion of the revolving drum. In this process, the force of the falling body is modified to produce the proper pressure on the friction plates. Further, the reliance on friction as a salient feature in the operation of the devices of necessity involves the conversion of kinetic energy to heat.

However, a device does not qualify as a machine merely because it contains mechanical parts, but an overall view of it must disclose that it is, in fact, a machine. *William H. Masson, Inc.* v. *United States*, 66 Cust. Ct. 55, C.D. 4167 (1971). It would appear that the overall impression of the devices in question is one of brakes rather than of machinery, and that brakes are not articles commonly thought of as machines. They are usually considered as parts of or adjuncts to machines, but not as machines in themselves. In the *William H. Masson* case, *supra*, the court recognized that there was an issue as to whether brakes were machines, but left the question open by considering brakes only hypothetically as machines, rather than making a definitive decision on the point. In *Nord Light, Inc.* v. *United States*, 49 CCPA 12, C.A.D. 786 (1961), the merchandise at issue was not brakes, but it was similar to the instant merchandise in that it suspended hanging light fixtures at adjustable heights using a mechanism employing a spring-loaded reel, pawls, and a ratchet. Its function was also similar to that of the instant merchandise in that it performed only instantaneously or occasionally without producing sustained work in the more conventional sense.

In our opinion it would be difficult to acknowledge that the merchandise which was the subject of the *Nord Light* case was properly regarded as a machine while claiming the instant merchandise was not a machine. Further, we have previously ruled that brakes by themselves, when employing certain mechanical features common to machines, are classifiable under item 678.50. This view was reflected in our letter of February 20, 1975 (file No. 031261), and in our protest review decision of November 6, 1974 (protest No. 30042001506).

Holding.—For the foregoing reasons, we now find that the (company name) safety block has been properly classified under item 678.50, and that the (company name) safety device is entitled to the same classification. Accordingly, our previous classification of Jan-

uary 27, 1975, is revoked in its entirety. We further find that the (company name) safety device, which was also the subject of that decision, should similarly be classified under item 678.50, regardless of its less complex design. This change is not applicable to the duty on any safety device where there has been a final liquidation.

(C.S.D. 81–90)

Classification: Electrical Modular or Perfusion System for Life Support Use During Coronary Surgery

Date: October 14, 1980
File: CLA–2:R:CV:MSP
054332 LLB

In your letter of March 31, 1978, on behalf of (corporate name) you requested the tariff classification of a device known as the (corporate name) Perfusion System, a product of West Germany.

Descriptive literature indicates that the perfusion system is comprised of the following:

Roller pump module—This is the key element of the (corporate name) Perfusion System. It provides rapid and repeatable occlusion while maintaining an accurate and dependable blood flow rate;

Timer module—A timing device consisting of two independent three-digit timers which display the elapsed time of individual events as well as the total elapsed time;

Temperature module—A device used to select and display the temperature sensed by any one of the six attached thermistor probes. The temperature is displayed via a light emitting diode to the nearest tenth of a degree;

Pressure/flow control module.—An apparatus used to monitor pressure in the arterial or coronary lines. It limits the maximum pressure to a predetermined positive value or maintains a constant positive or negative pressure at any point in the pump circuit. Changes in the flow resistance of the blood circuit are measured by a transducer with a digital display of the feedback;

ECG module.—A unit which provides a pulsatile flow, synchronized to the patient's ECG, during total or partial bypass;

Mobile console.—A stainless steel chassis which can hlod various combinations of components. The wheels are electrically conductive. The central power supply and current distribution are located in the console frame.

Essentially, the device is an electrical modular system designed to be used for life support in coronary surgery. It permits bypass of the heart during open heart surgery by combining a pumping system and oxygenator to furnish a constant and controlled supply of blood to the body. In addition, other monitoring components may be added to the system to monitor the condition of the patient.

You suggest that the merchandise (either in its entirety or through the use of combinations of various of its parts) may also be employed to treat a patient:

a. Suffering from acute respiratory insufficiency;

b. Suffering from liver failure;

c. Suffering from cardiopulmonary failure or failing lungs and needing long-term support; or,

d. Requiring localization of drugs which are injected for the treatment of cancer (regional chemotherapy).

You contend that the merchandise is more properly classifiable as other electromedical apparatus in item 709.17, Tariff Schedules of the United States (TSUS), dutiable at the rate of 6 percent ad valorem, rather than as electrosurgical apparatus, in item 709.15, TSUS, dutiable at the rate of 18 percent ad valorem. In support of this contention you argue that:

a. Since the perfusion system may possibly be employed to perform certain nonsurgical perfusion functions, it is more than an electrosurgical apparatus;

b. The device is analogous to an anesthetic device (which is not classifiable as an electrosurgical instrument even though it is used in surgery) because it merely assists in preparing the patient so that the surgeon can perform surgery; and,

c. While the merchandise is employed during surgery, it does not itself perform the surgical procedure and is operated not by a surgeon but by a perfusionist.

According to *Robert Bosch Corp. et al.* v. *United States*, 63 Cust. Ct. 96, 103-104, C.D. 3881 (1969), the more than doctrine provides that:

> * * * where an article is in character or function something other than as described by a specific statutory provision—either more limited or more diversified—and the difference is significant, it cannot find classification within such provision. It is said to be more than the article described in the statute. *Cragston Corporation* v. *United States*, 51 CCPA 27, C.A.D. 832 (1963); *United States* v. *The A. W. Fenton Company, Inc.*, 49 CCPA 45, C.A.D. 794 (1962); *Garrard Sales Corp.* v. *United States*, 35 CCPA 39, C.A.D. 369 (1947); and *Hirsch & Co. et al.* v. *United States*, 4 Ct. Cust. Appls. 82, T.D. 33365 (1913).

However, in a recent decision the Court of Customs and Patent Appeals noted:

> * * * there is little dispositive "doctrine" associated with the so-called "more than" doctrine. Thus, while in certain cases factors such as the "predominant function" of an article or its possession of a "second significant function," might have been important, these factors are not uniquely dispositive. To say that an article is "more than" that described by a particular tariff provision is to say little more than that, in the opinion of the court, the provision cannot be interpreted to cover it. In making this determination, however, the advice in *Green* [*Green & Son (New York), Inc.* v. *United States*, 59 CCPA 31, 450 F. 2d 1396 (1971)] is to first determine the meaning of the tariff provision involved. *The Englishtown Corporation* v. *The United States*, 64 CCPA at 87, 553 F. 2d 1258 (1977).

Item 709.15, TSUS, the provision covering electrosurgical apparatus, was derived from paragraph 359, Tariff Act of 1930. In the case of *Empire Findings Co., Inc.* v. *United States*, 44 Cust. Ct. 21, C.D. 2148 (1960), it was held that:

> The provision in paragraph 359, Tariff Act of 1930 * * * is a designation by use, which contemplates scientific instruments chiefly used by surgeons in the practice of their profession.

An earlier case, *Jensen Salsbery Lab., Inc.* v. *United States*, 66 Treas. Dec. 363, T.D. 47313 (1934) stated that "the real test is whether the instrument forms part of the necessary equipment of a surgeon to enable him efficiently to practice his profession of surgery."

From the above we surmise that the term surgical apparatus encompasses those instruments which are chiefly used by a surgeon to enable him to efficiently practice his profession.

Applying that rationale to the merchandise in question, we note that in a letter of November 11, 1977, the broker for the importer specifically stated that the unit is employed during open heart surgery. In addition, descriptive literature submitted in connection with your request for tariff classification leads us to conclude that the device is designed primarily for use in the operating room. Although additional literature was submitted to demonstrate that the merchandise may have certain nonsurgical uses, there was no information indicating that this particular system has actually performed these maneuvers or that it was intended to be chiefly used in performing such nonsurgical functions.

Furthermore, our research indicates that merchandise similar to this, which is also employed during surgery, is of little use elsewhere since other devices are more effective in performing maneuvers such as long-term support and regional chemotherapy.

In view of the above, it is our belief that the provision pertaining to electrosurgical apparatus can be interpreted to cover the perfusion system.

The fact that anesthetic devices are not classifiable as electrosurgical instruments, even though used during surgery, is not relevant to the disposition of the issue in this case. The provision covering anesthetic apparatus, item 709.06, TSUS, was specifically incorporated into the tariff schedules by section 60 of the Technical Amendments Act of 1965, 79 Stat. 933. [For a discussion of the legislative history of this provision, see *American Rusch Corp.* v. *United States*, 65 Cust. Ct. 410, C.D. 4115 (1970)]. Congress has not yet taken similar action to separately classify perfusion devices.

That the merchandise does not perform surgery itself and that it is operated by someone other than a surgeon are also immaterial. As previously noted, the test in such circumstances is whether or not the article is an instrument chiefly used by a surgeon to enable him to effectively practice his profession. (See *Empire Findings* and *Jensen* cases, supra). We have already established that the subject merchandise is employed during open heart surgery. It is an integral component in this type of procedure since the patient could not survive without its assistance. Even though the device is not operated by the surgeon himself, it is operated by a perfusionist working under his direction. There is no doubt that in this capacity, the perfusion system is used by a surgeon to enable him to effectively practice his profession.

In light of the aforementioned decisions, we cannot say that it was the intention of the court to limit the applicability of the term "surgical instruments" to only those articles which are used personally by the surgeon. Indeed, surgery today is generally performed by a group of highly trained professionals working as a team. One would be neglecting the realities of modern medical practice to state that surgical instruments are only those which are used exclusively by the surgeon during surgery.

In a meeting held in our offices subsequent to your submission of written arguments, you posited that the "Dictionary of Tariff Information" (1924), the "Summary of Tariff Information" (1929), concerning the Tariff Act of 1922, and the "Brussels Nomenclature," volume 4, served to properly define the universe of electrosurgical instruments for tariff purposes. Definitions taken from the above-referenced sources would basically limit classification of devices and electrosurgical to articles composed of either steel or soft metals, and which engage in either electrocutting of tissues or electrocoagulation of blood.

We do not believe that these provisions are dispositive of congressional intent in promulgating the tariff provisions at issue. Further, we have a long and established practice in this area which looks beyond these rather outmoded definitions and takes the current state of technological development into consideration in classifying products in this ever-changing area. Additionally, unlike the relevant Brussels Nomenclature provision, item 709.15, TSUS, incorporates diagnostic apparatus in its coverage. Certainly it must be conceded that competent medical personnel might be expected to complete a diagnostic procedure before resort to electrocutting of tissue or electrocoagulation of blood becomes necessary.

Evidence of the fact that the Brussels provisions were not carried over into the TSUS in wholesale fashion, and that the intent of the former is not reflected in the latter is found in the text of the provisions themselves. Whereas the Brussels provision gives separate breakouts for electrodiagnostic apparatus and electrosurgical apparatus, both under the broad provision for electromedical apparatus, the tariff schedule allowances for these devices are both contained in item 709.15 covering electrosurgical apparatus. The intent behind the two provisions cannot be at the same time identical and different.

Accordingly, we are of the opnion that the (trade name) Perfusion System is classifiable as an entirety under the provision for electrosurgical apparatus, in item 709.15, TSUS, dutiable at the rate of 18 percent ad valorem.

(C.S.D. 81–91)

Constructed Value: Uniform Application of Term "Assists" Throughout Section 402, Tariff Act of 1930, as Amended by Trade Agreements Act of 1979

Date: October 15, 1980
File: CLA–2:RRUCV
542139 TLL
TAA #9

This is in reply to your letter dated May 22, 1980, seeking the uniform application of the term "assists" throughout section 402, Tariff Act of 1930, as amended by the Trade Agreements Act of 1979. Specifically, you are concerned that certain assist costs which were formerly dutiable under the Tariff Act of 1930, as amended by the Customs Simplification Act of 1956, but which are not to be added to the price actually paid or payable as an assist because of the language of section 402(h)(i)(A), could be added to computed value as either cost of materials and fabrication or as a general expense under sec-

tion 402(e)(i). Your letter of April 26, 1980, states that you are concerned with the following particular costs:

> (1) Management services, accounting services, legal services, and other services related to imported merchandise rendered abroad or in the United States by persons paid by their U.S. employers; and
> (2) General purpose equipment, such as sewing machines, ovens, drill presses, etc., furnished free of charge or at reduced cost used abroad in the production of merchandise imported into the United States.

In responding to your inquiry, we would like to make reference to our recent letter to you dated September 4, 1980, in which we pointed out that those items included in paragraph 2, that is, sewing machines, ovens, drill presses, etc., were properly includable as "assists" under section 402(h)(i)(A) when furnished free of charge or at a reduced cost by the buyer for use in connection with the production of merchandise imported into the United States.

In addition, we wish to emphasize that one of the changes created by the latest amendment of section 402 is the use of generally accepted accounting principles (see sec. 402(g)(3)). Accordingly, the response to your question must take into account the generally accepted accounting principles of the country of production or exportation in the case of computed value. This of course, would require a case-by-case analysis. However, we can say that those items which were formerly treated as dutiable assists, but which are not to be treated as assists under 402(h)(i)(A), will not be added in as part of computed value, as long as such treatment is in accordance with the relevant generally accepted accounting principles.

(C.S.D. 81-92)

Value: Appraisement of Women's Wearing Apparel

Date: October 15, 1980
File: CLA-2:RRUCV
542181 RP
TAA 8

This is in response to your letter of August 5, 1980, in which you request a ruling concerning the appraisement of imported women's wearing apparel pursuant to title II of the Trade Agreements Act of 1979 (TAA).

You indicate that the importer purchases piece goods for its own account from unrelated sellers from various parts of the world. The piece goods are then supplied to the importer's related factory (which

is paid a cut, make, and trim (CMT) price only) or in other instances, to unrelated factories on the same CMT basis.

During the course of business, you state that the importer may have odd lots of remnants of fabrics on hand. The yardages of these fabrics may vary from a sufficient quantity to manufacture one or two garments to an amount which would yield approximately 200 garments. Since the importer sells under designer labels, styles and fabrics must be at the height of fashion and any out-of-season fabric becomes substantially decreased in value. Thus, the wearing apparel to be produced from these odd lot remnants is worth substantially less than current styles and sold for reduced prices in the United States. Reorders cannot be filled.

You also indicate that the commercial invoices accompanying the imported merchandise will only set forth the CMT charge. A separate statement will be submitted setting forth the depreciated value of the fabric utilized to make each garment.

As you know, under the TAA, the preferred basis of appraisement is to be transaction value. Section 402(b)(1) provides:

> (b) *Transaction Value of Imported Merchandise.*—(1) transaction value of imported merchandise is the price actually paid or payable for the merchandise when sold for exportation to the United States, plus amounts equal to—
>
> (A) the packing costs incurred by the buyer with respect to the imported merchandise;
>
> (B) any selling commission incurred by the buyer with respect to the imported merchandise;
>
> (C) the value, apportioned as appropriate, of any assist;
>
> (D) any royalty or license fee related to the imported merchandise that the buyer is required to pay, directly or indirectly, as a condition of the sale of the imported merchandise for exportation to the United States; and
>
> (E) the proceeds of any subsequent resale, disposal, or use of the imported merchandise that accrue, directly or indirectly, to the seller.

Based on the circumstances you describe, it is our opinion that the transaction value for the instant merchandise would be represented by the price actually paid or payable for the garments (i.e., the CMT charge paid to the manufacturer) plus applicable additions as specified in section 402(b)(1)(A)–(E).

Since the odd lot fabric is supplied to the manufacturer by the importer, the value of the fabric should be added to the CMT price as an assist under 402 (b)(1)(C). In determining the value of this assist, we do not agree with your assertion that the proper value of the odd lot fabric should be based on the depreciated value at which the fabric would be sold to an unrelated buyer. Rather, it is our position that

the value of the assist is represented by the importer's original cost of acquiring the fabric from the unrelated sellers throughout the world. The TAA Statement of Administrative Action, which was approved by Congress, makes clear that the value of assists such as materials, components, parts, and similar items incorporated in the imported merchandise is the cost of acquistion, where the importer acquires the assist from an unrelated seller.

You maintain that the fabric was originally purchased for specific styles and orders, and that since the leftover fabric was not incorporated into the original orders, the odd lot fabric should be considered previously used. Therefore, it is your position that the assist should be valued in accordance with the section of the Statement of Administrative Action pertaining to the determination of the value of assists such as tools, dies, molds, and similar items used in the production of imported merchandise. For assists of this nature which have been previously used by the importer, the original cost of acquisition can be adjusted to reflect its use in order to arrive at the value of the assist.

However, while the odd lot fabric used by the manufacturer in this case may result in the production of a garment which is not in vogue or is sold at a reduced price, it is our opinion that the fabric has not been previously used, and therefore, no downward adjustment in value can be made. Moreover, it is clear that the odd lot pieces of fabric are materials which are incorporated into the finished garments. Consequently we find that the importer's cost of acquisition from the unrelated sellers represents the value of the material assists provided provided to the maker of the imported merchandise.

For the purpose of this ruling we note that in those instances where the importer and maker of the garments are related parties, transaction value is assumed to be the proper basis of appraisement, provided that the related party transaction is acceptable to Customs pursuant to section 402 (b)(2)(B).

(C.S.D. 81–93)

Entry Requirements: Alcoholic Beverages: Entry Documentation in Broker's Name When BATF Permit is in Importer's Name

Date: October 17, 1980
File: ENT–1–01 RRUEE
712285 M

This ruling concerns whether Customs may accept entry documentation from the broker in his name and under his bond for the

account of the importer for alcoholic beverages imported under a BATF permit in the name of the importer.

Issues.—(1) May Customs allow alcoholic beverages to be released under an immediate delivery permit, or an entry on Customs form 3461 in the name of the broker and under his bond, when BATF regulations require a permit in the name of the importer?

(2) Does the practice of permitting the broker to obtain release of the importer's merchandise under an immediate delivery permit or entry on Customs form 3461 in the broker's name under the broker's bond, and then permitting the entry summary, Customs form 7501, to be filed in the importer's name under the importer's bond, apply to the importation of alcoholic beverages?

Facts.—Some commercial importers of wine make large but infrequent importations of wine. For this reason, they do not desire to incur the expense of maintaining a yearly term entry bond and instead utilize single entry bonds to support their entry summaries for consumption. Because of possible theft or damage due to the elements, they desire expeditious release of their shipments. This is achieved by having customhouse brokers obligate their term bonds to obtain release of the shipment under either the immediate delivery or the new entry procedure. The importer will obtain a single entry bond for the purpose of filing a timely entry summary.

The district director of Customs at Detroit, Mich., notes that under Legal Determination 3550–26, Customs provided that there was no prohibition against the practice of permitting the broker to file an immediate delivery permit to obtain the release of the merchandise under his bond, and the filing of the entry (now called entry summary) under the importer's bond, since the broker is the agent of the importer. However, the district director notes that since the import permit can be made out only in the name of the actual importer, the broker is precluded from filing the entry summary in his name and under his bond. The district director thus concludes that the broker would be precluded from obtaining the release of the merchandise in his name and under his bond, using either the immediate delivery or the current entry procedures.

Law and analysis.—27 CFR 1.20 provides, in pertinent part, that no person, except pursuant to a basic permit issued under the act, shall be engaged in the business of importing into the United States distilled spirits, wines, or malt beverages.

Legal Determination 3550–26 (file No. ENT–1–01 R:E:E 305551 M) provides that the broker may file an immediate delivery in his name and under his bond to obtain the release of the merchandise, and the importer may file the entry (now called entry summary) in the im-

porter's name under the importer's bond. This ruling was applied to the new entry procedure by T.D. 79–221, which added a new section 142.4(b)(2) to the Customs Regulations.

The Bureau of Alcohol, Tobacco and Firearms has advised us that:

> When a broker is not the importer but merely takes possession on behalf of another, the alcoholic beverages must be released under the name and bond of the person actually responsible for the importation. If that person is engaged in the business of importing alcoholic beverages into the United States, the alcoholic beverages may not be released from Customs custody unless he has a basic permit.

Holdings.—1. Customs may not accept documentation from the broker in his name and under his bond, for the account of the importer of the alcoholic beverages who has a basic permit required by BATF.

2. The practice of permitting the broker to file the releasing document under his name and bond, and the entry summary in the name of the actual importer does not apply to alcoholic beverages. Under such circumstances, 27 CFR 1.20 would preclude the release of alcoholic beverages under the name and the bond of the broker.

(C.S.D. 81–94)

Classification: Uri-Dip, Urine Testing Device

Date: October 20, 1980
File: CLA–2:RRUCGC
064257 JCH

This decision concerns the tariff classification of Uri-Dip, a product consisting of an agar-coated plastic stick attached to a plastic cap which screws into a plastic vial in which the stick can be sealed for culture purposes.

Issues.—In compliance withour classification of a previous version of the product in question on January 6, 1976 (file No. 043378) which in turn followed T.D. 70–95(13), 4 Cust. Bull. 199 (1970), it, is contended, in effect, that duty is being assesed on the current version of the merchandise by some prots at the column 1 rate of duty of 19.4 percent ad valorem for pharmaceutical, hygienic, and laboratory glassware in item 547.55, Tariff Schedules of the United States (TSUS), under the similitude provision in item 798.00, TSUS, while at other ports duty is being assessed at the column 1 rate of 4.8 percent ad valorem under the provision for nonenumerated products in item 799.00, TSUS. If these classifications are not correct, it isfurther contended that the merchandise is properly classi-

fiable underthe provision for articles of plastics, not specially provided for (n.s.p.f.) in item 774.55 (formerly item 774.60), TSUS, requiring a current column 1 rate of duty of 8.1 percent ad valorem. This last claim raises the subsidiary issue as to whether the value of the plasticvials can beincluded in order to determine whether the merchandise is in chiefvalue of plastics.

Facts.—Uri-Dip, which is primarily used for urine testing, comes with coated sticks hermetically sealed in the plastic vials. Agar and other materials are used as culture media, and both sides of the sticks are coated. The present version differs from the version previously ruled on in that the cap is screwed on rather than snapped on. This allows for a greater range of tests by providing for a more mechanically tight seal.

Under a component cost breakdown provided by the ruling applicant, the value of the culture media on the plastic sticks is greater than the value of the plastic sticks themselves. If, however, the value of the plastic vials is included, the total value of the plastic components is greater than the value of the culture media.

Law and analysis.—In T.D. 70–95(13) we held that plastic containers imported with glass slides coated with culture media were regarded as packing. Accordingly, we regarded the product as essentially laboratory glassware within the meaning of headnote 2, subpart C, part 3, schedule 5, TSUS, and held it classifiable under item 547.55.

In our letter of January 6, 1976, we held, in effect, that the analogous plastic vials to be imported with the previous version of the instant merchandise also were to be regarded as packing, and, therefore, their value could not be considered in determining whether the imported products were in chief value of plastics. Accordingly, we held that if the value of the culture media was greater than the value of the plastic stick exclusive of the value of the plastic vials, the merchandise had to be regarded as duitable by virtue of the similtuce provision in item 798.00, under the rates of duty provided for under item 547.55. This position was consistent with our classifications of similar products from other manufacturers at various times. We assume that the claimed classifications of the instant merchandise under item 799.00 has reference to our ruling dated September 18, 1975 (file No. 04145), in which we held that plastic strips to which other reagent-impregnated-plastic parts were attached for urine and other tests were classifiable under item 799.00 if in chief value of the chemicals.

While the ruling applicant contends that the plastic vials should be regarded as entireties with the coated plastic sticks rather than as packing, general headnote 6(b)(i), TSUS, which requires that packing be dutiable at the same rate as the imported merchandise,

in effect, makes packing an entirety with its contents. However, while the dutiable status of merchandise is ordinarily determined independently of the packing, this does not represent a hard and fast rule. In certain circumstances, it is appropriate to consider packing when it is pertinent to classification or a salient feature of the imported merchandise. For example, in our ruling of February 3, 1977 (file No. 047532), we considered the value of packing in determining whether imported merchandise contained materials representing the required amounts of beneficiary-developing-country-produced materials under the Generalized System of Preferences. It is now our view that whether or not the plastic vials are considered entireties with the coated plastic sticks under general headnote 6(b)(i) or otherwise, the nature of the importation is such that the plastic in the vials should be included in determining the component material in chief value.

Since it is claimed that the articles at issue would be found to be in chief value of plastics if the value of the vials is included, it is unnecessary for us to review the correctness of the previous application of items 798.00 and 799.00 to this merchandise. We note, however, that the sticks are actually small rectangular-shaped double-sided dishes or trays containing culture media and therefore have laboratory glassware analogies in slides or culture dishes. The merchandise which was the subject of our ruling of September 18, 1975, had a different configuration.

Holding.—The value of both the plastic stick and vial components of the product at issue should be included in determining the component material in chief value. Assuming the articles will thereby be found at the time of importation to be in chief value of plastics, they will pe classifiable under the provision for articles of plastics, n.s.p.f., in item 774.55. Our previous ruling of January 6, 1976, and all other classifications of similar merchandise should be regarded as modified to the extent they may be inconsistent with this decision.

(C.S.D. 81-95)

Vessels: Transport of Passengers and Merchandise by a Noncoastwise Vessel to Points on the Outer Continental Shelf or Within U.S. Territorial Waters

Date: October 22, 1980
File: VES-3-15-RRUCDC
104880 JL

This ruling concerns the applicability of the coastwise laws to the operation of vessels between the United States and points on the Outer Continental Shelf.

Issues.—1. May a non-coastwise-qualified vessel transport passengers and/or merchandise between a point within U.S. territorial waters and a point on the Outer Continental Shelf which has been marked for mineral exploration and exploitation purposes by a buoy attached to the seabed?

2. May a non-coastwise-qualified vessel transport passengers and/or merchandise to a point on the Outer Continental Shelf where a well production casing has been imbedded into the seabed?

Facts.—It is proposed to construct vessels which will be used to transport workmen, materials, and supplies to points on the U.S. Outer Continental Shelf. These points will be either operational locations which are sites selected for drilling and marked by buoys attached to the seabed, or locations where a well has been drilled and casings and pipes are in place in the seabed awaiting the placement of a production platform or vessel for the extraction of the mineral deposit. The inquirer asks whether the activities to be engaged in by the vessels may be accomplished by non-coastwise-qualified vessels.

Law and analysis.—Title 46, United States Code, section 883 prohibits the transportation of merchandise between U.S. coastwise points by a non-coastwise-qualified vessel, that is, a foreign-flag vessel, a foreign-built vessel, or a vessel which at one time has been under foreign-flag or ownership.

Section 289 of title 46 prohibits the transportation of passengers between coastwise points by a non-coastwise-qualified vessel.

Section 1333(a)(1) of title 43, prior to its amendment by Public Law 95–372 in 1978, stated in relevant part as follows:

> The constitution and laws and civil and political jurisdiction of the United States are extended to the subsoil and seabed of the Outer Continental Shelf and to all artificial islands and fixed structures which may be erected thereon for the purpose of exploring for, developing, removing, and transporting resources therefrom, to the same extent as if the Outer Continental Shelf were an area of exclusive Federal jurisdiction located within a State.

Public Law 95–372 amended, among other things, 43 U.S.C. 1333(a)(1) by striking out "and fixed structures" and inserting in lieu thereof", and all installations and other devices permanently or temporarily attached to the seabed," and by striking out "removing, and transporting resources therefrom" and inserting in lieu thereof, "or producing resources therefrom, or any such installation or other device (other than a ship or vessel) for the purpose of transporting such resources."

T.D. 54281(1) published an abstract of a ruling letter dated December 11, 1956, which held that, among other things, the coastwise laws are extended to mobile rigs during the period when they

are secured to or submerged onto the seabed of the Outer Continental Shelf. Subsequent rulings applied the same principles to drilling platforms, artificial islands, and similar structures. However, Customs has not considered the coastwise laws to apply unless and until the structure was attached in some manner to the seabed of the shelf. The import of this distinction is that no "coastwise point" was deemed to be in existence until the structure was attached. Thus non-coastwise-qualified vessels were free to transport passengers and/or merchandise to a location where a platform or other structure was being constructed, whether an exploration structure, such as a drilling platform, or an exploitation structure, such as a production platform.

The question now presented is whether the amendment of 43 U.S.C. 1333(a)(1) by Public Law 95–372 dictates that Customs now change its position in this area.

The insertion of the words "and all installations and other devices permanently or temporarily attached to the seabed" in lieu of "and fixed structures" unmistakably evidences a broadening of the jurisdictional assertion of 43 U.S.C. 1333(a)(1) to cover such devices as are here under consideration. The placement of a buoy to mark a point for the commencement of exploratory operations on the shelf by securing it to the seabed is "for the purpose of exploring for * * * resources," within the meaning of the statute. Likewise a well casing with attendant accessory systems, when submerged into the seabed of the shelf, are "other devices" within the meaning of section 1333 (a)(1). Accordingly, Customs and navigation laws, including the coastwise laws and the laws concerning the entrance and clearance of vessels are extended to such devices during the period when they are submerged onto or attached to the seabed of the Outer Continental Shelf.

Holdings.—1. The Customs and navigation laws of the United States, including the laws regarding entrance and clearance of vessels and the coastwise laws, are extended to sites on the U.S. Outer Continental Shelf when devices and structures of all kinds are attached to or submerged onto the seabed for the purpose of exploring for, developing, producing, or transporting resources therefrom pursaunt to 43 U.S.C. 1333(a)(1), as amended by Public Law 95–372.

2. The transportation of passengers and/or merchandise from a point within U.S. territorial waters (or from a coastwise point outside territorial waters) to a buoy marker which is submerged onto or attached to the Outer Continental Shelf for the purpose of resource exploration operations is prohibited to a non-coastwise-qualified vessel pursuant to 46 U.S.C. 883 and 289.

3. The transportation of passengers and/or merchandise from a point within U.S. territorial waters (or from a coastwise point outside territorial waters) to a well which has been sunk into the seabed of the Outer Continental Shelf for the purpose of resource exploration or production is prohibited to a non-coastwise-qualified vessel pursuant to 46 U.S.C. 883 and 289.

Other documents affected: C.S.D. 79–1 expanded and T.D. 54281(1) expanded.

(C.S.D. 81–96)

Drawback: Orange Juice To Satisfy the Requirement of the Substitution Drawback Law (19 U.S.C. 1313(b))

Date: October 22, 1980
File: DRA-1-RRUCDB NK 211782

Issues.—1. Whether orange juice as extracted from fresh oranges is of the same kind and quality as concentrated orange juice to satisfy the requirement of the substitution drawback law (19 U.S.C. 1313(b)), and, if not,

2. Whether Customs approval of the protestant's drawback contract on June 27, 1978 (T.D. 78–293–A), authorized the substitution of domestic fresh orange juice for imported designated concentrated orange juice as claimed by the protestant.

Facts.—Imported concentrated orange juice of 65° Brix was designated by the protestant as the basis for drawback on the exported product. The exported product was single strength orange juice made with the use of orange juice as extracted from fresh oranges which was at no time in a concentrated condition. The protestant claims:

(1) That domestic fresh orange juice (single strength juice) used to produce a product of single strength orange juice for export is of the same kind and quality as imported designated concentrated orange juice of 65° Brix; and,

(2) That Customs approval of the protestant's drawback contract on June 27, 1978, authorized the substitution of domestic fresh orange juice for imported concentrated orange juice for use in producing a single strength orange juice product for drawback.

Law and analysis.—

Issue 1—Same Kind and Quality

Under section 1313(b), the substituted domestic merchandise and the designated imported merchandise used in production for

drawback must be of the same kind and quality. Customs consistently has used industry standards as guidelines in its administration of the substitution drawback law in determining questions of same kind and quality.

In a publication in the Federal Register, June 10, 1980 (45 F.R. 39244, T.D. 80–153), the Customs Service concluded that the standards of identities of the Food and Drug Administration (FDA) and the standards of grades of the Department of Agriculture (USDA) for orange juice products (21 CFR, part 146, and 7 CFR, part 2852) represent industry standards for these products. The Customs Service affirmed its use of these standards in determining the same kind and quality questions for orange juice products under the substitution drawback law. Since this publication contains reasoning which is also applicable in arriving at our decision in this protest, it is incorporated by reference as part of our decision.

In applying the FDA and USDA standards for orange juice products, we conclude that single strength orange juice products, frozen orange juice (21 CFR 146.137) and orange juice for manufacturing (21 CFR 146.151) are not of the same kind and quality for drawback substitution purposes as frozen concentrated orange juice (21 CFR 146.146) and concentrated orange juice for manufacturing (21 CFR 146.153).

Issue 2.—Whether Customs Authorized the Substitution of Fresh Single Strength Juice for Concentrate

Reproduced below are the parallel columns in the protestant's approved drawback contract listing the domestic merchandise in the right hand column substituted for the corresponding imported designated merchandise.

Imported merchandise or drawback products to be designated as the basis for drawback on the exported products	*Duty-paid, duty-free, or domestic merchandise of the same kind and quality as that designated which will be used in the manufacture of the exported products*
Orange juice and/or concentrated orange juice as defined in the FDA Standards of Identity for: Frozen orange juice, 21 CFR 146.137 orange juice for manufacturing, 21 CFR 146.151 Frozen concentrated orange juice, 21 CFR 146.146	Orange juice and/or concentrated orange juice as defined in the FDA Standards of Identity for: Frozen orange juice, 21 CFR 146.137 Orange Juice for manufacturing, 21 CFR 146.151

Concentrated orange juice for manufacturing, 21 CFR 146.153	Frozen concentrated orange juice, 21 CFR 146.146 Concentrated orange juice for manufacturing, 21 CFR 146.153
Additionally these products would meet the requirements of the USDA Standards for grade as grade A products. The products described above will range from 11.8° Brix to 70° Brix.	Additionally these products would meet the requirements of the USDA Standards for grade as grade A products. The products described above will range from 11.8° Brix to 70° Brix.

There are four different products listed in the parallel columns which incorporate by reference the definitions of the standards of identities of the FDA for those products. The columns show that Customs approved the substitutions as listed in the protestant's contract as follows:

1. Frozen orange juice (21 CFR 146.137) for frozen orange juice;
2. Orange juice for manufacturing (21 CFR 146.151) for orange juice for manufacturing:
3. Frozen concentrated orange juice (21 CFR 146.146) for frozen concentrated orange juice; and
4. Concentrated orange juice for manufacturing (21 CFR 146.153) for concentrated orange juice for manufacturing.

The contract does not list in the parallel columns the substitution of domestic frozen orange juice (21 CFR 146.137) for imported designated concentrated orange juice for manufacturing (21 CFR 146.153). However, based on the additional statement in the parallel columns that "the products described above will range from 11.8° Brix to 70° Brix" and the manufacturing processes described in the approved contract, the protestant claims that Customs Headquarters authorized the substitution of domestic single strength orange juice for imported designated concentrated orange juice. We do not agree.

The four products listed in the parallel columns may collectively range from 11.8° Brix to 70° Brix. However, based on the standards of identities of the FDA incorporated by reference in the protestant's contract, it is not technically possible for each individual listed product to range from 11.8° Brix to 70° Brix. The concentration of orange

juice soluble solids of concentrated orange juice for manufacturing (21 CFR 146.153 and 7 CFR 2852.2221–2231) is not less than 20° Brix. The Brix value of frozen concentrated orange juice (21 CFR 146.146 and 7 CFR 2852.1581–1592) is not less than 41.8° Brix. Single strength juice (21 CFR 146.137 and 146.151), which of course is not concentrated, is less than 20° Brix. The average Brix value of unconcentrated natural orange juice is determined in the trade and commerce of the United States as 11.8° Brix. (See Customs Regulations, 19 CFR 151.91). Frozen orange juice as defined in the standard of identity (21 CFR 146.137) and orange juice for manufacturing as defined in the standard of identity (21 CFR 146.151) cannot meet the definition of concentrated orange juice for manufacturing as defined in the standard of identity (21 CFR 146.153) and vice versa.

Further evidence that Customs headquarters did not authorize the substitution of frozen orange juice for concentrated orange juice for manufacturing is the additional paragraph inserted in the protestant's contract after the parallel columns which reads as follows:

> The imported merchandise which we will designate on our claims will be so similar in quality to the merchandise used in manufacturing the exported articles on which we claim drawback that the merchandise used would, if imported, be subject to the same rate of duty as the imported designated merchandise.

Frozen orange juice, not concentrated (21 CFR 146.137), is classifiable in item 165.30, Tariff Schedules of the United States (TSUS) under the column 1 rate of duty at 20 cents per gallon. Concentrated orange juice for manufacturing (21 CFR 146.153) is classifiable in item 165.35, TSUS, under the column 1 rate of duty at 35 cents per gallon. Accordingly, if Customs headquarters authorized the substitution of frozen orange juice for concentrated orange juice for manufacturing, such authorization would be inconsistent with the paragraph concerning rate of duty.

The substitution drawback law also requires that to be eligible for drawback, the merchandise must be used in the manufacture or production of articles for export. The caption "Processes of Manufacture or Production" in the protestant's approved contract describes three optional manufacturing processes for canned orange juice for export as follows:

> 1. Canned orange juice may be prepared from orange juice extracted from fruit meeting the maturity requirements of the Florida Citrus Code.
>
> *Comment*—This process is in conformity with the claim in the parallel columns that domestic frozen orange juice (21 CFR 146.137) would be substituted for imported designated frozen orange juice (21 CFR 146.137).

2. Canned orange juice can also be prepared from concentrated orange juice (imported and/or domestic) which has been reconstituted to a minimum of 11.8° Brix with water.

Comment—This process is in conformity with the claim in the parallel columns that domestic concentrated orange juice for manufacturing (21 CFR 146.153) would be substituted for imported designated concentrated orange juice for manufacturing (21 CFR 146.153).

3. Canned orange juice can also be produced by mixing freshly extracted juice and reconstituted concentrate to give a final product with a minimum of 11.8° Brix.

Comment—This process is in conformity with the claim in the parallel columns that domestic frozen orange juice would be substituted for imported designated frozen orange juice and that domestic concentrated orange juice for manufacturing (used to produce reconstituted juice) would be substituted for imported designated concentrated orange juice for manufacturing.

The manufacturing or production processes described above do not support the protestant's contention that Customs headquarters approved the substitution of domestic frozen orange juice for imported designated concentrated orange juice for manufacturing.

Holding.—

Issue 1—Orange juice as extracted from fresh oranges is not of the same kind and quality as concentrated orange juice for manufacturing for substitution drawback purposes.

Issue 2—Customs headquarters approval of the protestant's drawback contract on June 27, 1978, did not authorize the substitution of fresh orange juice for imported designated concentrated orange juice.

You are directed to deny the protests in full. Your file is returned herewith.

(C.S.D. 81–97)

Temporary Importation Under Bond: TIB's Canceled When Exporter Takes Possession of Merchandise Entered Under Bond

Date: October 24, 1980
File: CON–9–04–RRUCDB
211657 SMC

Issue.—When merchandise entered under a temporary importation bond (TIB) has been sold for exportation, may the bond be canceled when the exporter takes possession?

Facts.—A manufacturer imports components temporarily free of duty under bond. The components are used in the production of steel cargo containers which are sold for exportation by the importer to international leasing and shipping companies. The importer requests that the TIB's be canceled when the exporters take possession of the containers and confirm their receipt by affidavit.

Law and analysis.—Headnote 1(a), schedule 8, part 5, subpart C, Tariff Schedules of the United States, provides in part that articles described in the provisions of this subpart, when not imported for sale or sale on approval, may be admitted into the United States without the payment of duty, under bond for their *exportation* within a specified period of time. [Italic added.]

Bonds taken pursuant to this provision of law may be canceled only by the exportation or destruction under Customs supervision of the articles entered. Upon failure to so export or destroy within the bond period, liquidated damages shall be assessed in an amount equal to double the estimated duties applicable to such entry.

It is therefore necessary to address ourselves as to what is considered an exportation. Section 113.55(a), Customs Regulations, defines exportation as "a severance of goods from the mass of things belonging to this country with the intention of uniting them to the mass of things belonging to some foreign country." From this definition it is clear that an exportation has not taken place when an exporter merely takes possession of articles sold to him by an importer. A "severance of goods from the mass of things belonging to this country * * *" has not been made, therefore the bond cannot be canceled at this point. An affidavit by the exporter confirming his receipt of the articles would not alter this fact. Further, the importer's liability under the bond would not be terminated upon sale of the articles to the exporter. The obligation to export rests with the importer and cannot be transferred to the exporter.

Holding.—A TIB has not been canceled when an exporter takes possession of merchandise entered under the bond and sold to him by the importer.

(C.S.D. 81–98)

Foreign Trade Zones: Customs Regulations Relating to Domestic Merchandise Transferred From Customs Territory Into or From FTZ Into Customs Territory

Date: October 24, 1980
File: FOR–1–RRUCDB L 211834

Issue.—May the Customs Service waive the requirements of sections 146.12, 146.22, and 146.44, Customs Regulations (19 CFR

146.12, 146.22, and 146.44), as they relate to domestic merchandise transferred from the Customs territory into a foreign-trade zone (FTZ), or from a FTZ into the Customs territory?

Facts.—A domestic company imports foreign materials, parts, components, subassemblies, and assemblies to produce both internal combustion jet aircraft and marine industrial engines. All of the above foreign articles are also imported to supply a spare parts inventory, and on occasion a complete engine is imported. The inquirer wishes to transfer this merchandise into a FTZ and states it will comply completely with the requirements of sections 146.12, 146.32, and 146.45 or 146.46, Customs Regulations (19 CFR 146.12, 146.32, and 146.45 or 146.46,) insofar as foreign merchandise is concerned. It seeks relief from any and all requirements on domestic merchandise prescribed in sections 146.12, 146.22, and 146.24, Customs Regulations (19 CFR 146.12, 146.22, and 146.24), and all other applicable sections.

Law and analysis.—The sections of the Customs Regulations from which relief is requested relate to the application and permit for admission of merchandise to a FTZ (sec. 146.12), and to privileged (sec. 146.22) and nonprivileged (sec. 146.24) domestic merchandise.

Privileged domestic merchandise is defined in the regulations as (a) merchandise which is the growth, product, or manufacture of the United States on which all internal revenue taxes, if applicable, have been paid, (b) previously imported merchandise on which duty and/or tax has been paid, or (c) merchandise previously admitted free of duty. Privileged domestic status must be requested specifically on the application to transfer merchandise into the FTZ. The exception to this requirement is that domestic packing and repair materials may be transferred to a FTZ as privileged domestic merchandise without the application otherwise required provided the district director is satisfied that the revenue will be protected and the rights of the importer are not prejudiced.

Privileged domestic merchandise which has not lost its identity by being repacked, manipulated, or manufactured with merchandise having a different FTZ status, or which has not otherwise lost its identity, may be returned to Customs territory free of quota, duty, or tax.

Nonprivileged domestic merchandise is merchandise which could have obtained the status of privileged domestic merchandise had an application for such status been approved.

We understand that the greater number of articles transiting the FTZ are aircraft engine parts and that many, if not all, of the imported parts, etc., are interchangeable between aircraft, marine, and industrial engines. Imported aircraft engines and parts for civil aircraft are free of duty under Title VI, Civil Aircraft Agreement, of

the Trade Agreements Act of 1979 (Public Law 96–39). These articles, upon application, would be entitled to privileged domestic status under section 146.22(a)(3), Customs Regulations (19 CFR 146.22(a)(3)). They would also be entitled to nonprivileged domestic status under section 146.24, Customs Regulations. Marine and industrial engines and parts do not, of course, receive the duty-free treatment accorded aircraft engines and parts under the Trade Agreements Act of 1979.

We are advised that aircraft, marine, and industrial engines are assembled on the same production lines. This, it appears, would result in interchangeable parts, assemblies, etc., with different zone statuses being available for incorporation into aircraft as well as marine and industrial engines. There would be a similar situation with the spare parts inventory. Thus, if the requested relief were granted, it appears that most articles entering and leaving the FTZ would receive no Customs treatment.

If the requested relief from sections 146.12, 146.22, and 146.24, Customs Regulations, were granted, all merchandise meeting the definitions in section 146.22(a) and 146.24, Customs Regulations, also would be eligible for admission to the FTZ and unrestricted movement in the FTZ free of any form of Customs control. By reason of the Civil Aircraft Agreement, imported parts, assemblies, etc., dedicated to aircraft engines for civil aircraft and previously admitted into the Customs territory free of duty and tax, together with domestic and other qualified merchandise, could be admitted to the FTZ without documentation or Customs control. Many of the imported parts, which are free of duty when dedicated to aircraft engines, are interchangeable with parts used in marine and industrial engines which are dutiable if entered into the Customs territory. In our view, the presence in the FTZ of undocumented imported parts dedicated to aircraft engines which are interchangeable with imported parts not dedicated to aircraft engines when aircraft and other engines are manufactured on the same production lines would introduce intolerable control problems for the Customs Service and would represent a serious risk to the revenue, problems and risk which the regulations are designed to avoid.

It is the responsibility of the Customs Service, together with the Foreign-Trade Zones Board, to administer the admission of merchandise into, and the transfer of merchandise from, a FTZ. The Customs Regulations prescribe the procedures applicable to such admissions and transfers. The facts presented do not justify, in our view, a waiver of the regulations to grant the requested relief.

Holding.—Under the circumstances described, there is no basis to waive the requirements of sections 146.12, 146.22, and 146.24,

Customs Regulations (19 CFR 146.12, 146.22, and 146.24), as they relate to domestic merchandise transferred, from the customs territory into or from a FTZ into the Customs territory.

(C.S.D. 81–99)

Value: Assists—Dutiability of Engineering Drawings and Specifications

Date: October 24, 1980
File: CLA–2:RRUCV
542209 MK

To: District Director, San Francisco, Calif.

From: Director, Classification and Value Division.

Subject: Dutiable Status of Engineering Drawings and Specifications (Internal Advice Request No. 126/80)

This replies to your memorandum of July 3, 1980, with enclosures, which transmitted an importer's request for internal advice on whether engineering drawings and specifications, which the importer furnished to the manufacturer free of charge, are a dutiable assist under the provisions of section 402, Tariff Act of 1930, as amended by the Customs Simplification Act of 1956 (new law.)

The importer requested sealed bids, from qualified bidders, to construct a new vertical lift span in an existing railroad bridge. In order to give those bidders the necessary technical data on which to bid, the importer commissioned a consulting engineers' firm to draw up plans and specifications, and paid the firm $162,500. The plans were necessary for the production of the bridge.

The importer's customhouse broker cites C.S.D. 79–299 (No. 061067), and a headquarters ruling of January 18, 1977 (No. 540764), to support his contention that if drawings are provided free of charge, they are not considered as a dutiable assist.

We believe the facts in the cited cases are clearly distinguishable from the case before us. C.S.D. 79–299 concerned old drawings of transmission towers previously made up and used by several State and Federal agencies. The drawings were in the public domain and, therefore, available to anyone wishing copies. In the 1977 ruling, there was evidence that any person would be allowed to copy the drawings in question for the cost of reproduction.

In the case before us, the drawings were specifically commissioned for a particular bridge, and there is no evidence that they were available to anyone who requested them, simply for the cost of reproduction.

In fact, we understand that the bidders were only given sufficient technical data to enable them to submit their bids, and that the entire package of drawings and specifications was given only to the successful bidder.

We find no legal basis for the broker's contention that the drawings and specifications were not dutiable because they were supplied to the foreign manufacturer free of charge. In the case of *Ford Motor Company* v. *United States*, A.R.D. 9 (1952), pattern equipment, manufactured in the United States, was furnished to the manufacturer without charge, and used as a mold in producing imported iron castings. In reply to the contention that the cost of the pattern equipment should not be included in cost of production (Sec. 402(f), Tariff Act of 1930, as amended), the court said:

> Nowhere in said section do we note any requirement that the cost shall have been one incurred by the manufacturer who has produced the goods * * *. Its purpose is to derive, not the manufacturer's actual cost, but the actual cost of manufacture.

We conclude that the drawings and specifications should be treated as a dutiable assist. If the entire amount of $162,500 is attributed to drawings and specifications used in the production of the imported merchandise, then the full amount is dutiable as an assist. If any drawings dealt with such matters as terrain studies or other matters not directly related to production of the imported merchandise, they should not be included in the dutiable value.

(C.S.D. 81–100)

Foreign Trade Zones: Destruction of Zone Restricted Merchandise, 19 U.S.C. 81c

Date: October 28, 1980
File: DRA-1-RRUCDB RB
211984

Issue.—Whether the removal by a cyanide solution of precious metal overlay from rejected semiconductor devices represents part of a destruction process within the intent of C.S.D. 80–67 interpreting section 3 of the Foreign Trade Zones Act, as amended (19 U.S.C. 81c).

Facts.—A firm plans to bring into a foreign trade zone rejected semiconductor devices for destruction. The majority of devices to be destroyed are of either plastic or ceramic construction with precious metal contained only within each device. These devices will simply be crushed in a hammer mill and the valuable scrap salvaged therefrom after withdrawal from the foreign trade zone, a process already

specifically approved in C.S.D. 80–67. However, the remaining devices have an exterior overlay of precious metal which should be removed initially in order to insure the greatest ultimate recovery of gold.

Accordingly, once in the zone, these latter devices would be immersed in a cyanide solution in order to remove the precious metal overlay therefrom. After the precious metal is chemically removed and in solution, the devices would then be crushed in a hammer mill. There would be no recovery of the valuable metal scrap by removing it from the cyanide solution until after the solution is withdrawn from the foreign trade zone.

Law and analysis.—According to section 3 of the Foreign Trade Zones Act, as amended (19 U.S.C. 81c):

> * * * under the rules and regulations of the controlling Federal agencies, articles which have been taken into a zone from customs territory for the sole purpose of exportation, destruction (except destruction of distilled spirits, wines and fermented malt liquors), or storage shall be considered to be exported for the purpose of—(a) the drawback, warehousing, and bonding, or any other provisions of the Tariff Act of 1930, as amended, and the regulations thereunder.

In C.S.D. 80–67 it was ruled that the crushing of semiconductors in a foreign trade zone satisfies the requirement for destruction under 19 U.S.C. 81c. The only question here is whether putting the semiconductors in a cyanide solution prior to crushing would alter the ruling in C.S.D. 80–67.

The removal of the precious metal by putting the semiconductors in a cyanide solution and the subsequent crushing of the semiconductors constitute steps in the destruction of the semiconductors. There is no requirement in the Foreign Trade Zones Act that articles may not be destroyed by the process which results in scrap of the highest value. The important point is that if the destruction consists of multiple steps, each step should carry forward the destruction of the articles, as is true of the case under consideration.

Holding.—The ruling contained in C.S.D. 80–67 is applicable to the destruction of the devices wherein the destruction process initially involves the removal of precious metal overlay in a cyanide solution and then through the physical crushing of the devices. Hence, the requirement of destruction of zone restricted merchandise under section 3 of the Foreign Trade Zones Act, as amended (19 U.S.C. 81c), is satisfied.

U.S. Customs Service

General Notice

(19 CFR Part 4)

VESSELS IN FOREIGN AND DOMESTIC TRADES

Proposed Customs Regulations Amendments Concerning the Illegal Discharge of Oil and the Pollution of Coastal and Navigable Waters

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This notice proposes to amend the Customs Regulations relating to the illegal discharge of oil and the pollution of coastal and navigable waters by the deposit of refuse matter or hazardous substances. The amendments are being proposed to conform the Customs Regulations with changes made by the Federal Water Pollution Control Act Amendments of 1972 (Public Law 92–500), which were enacted to restore and maintain the chemical, physical, and biological integrity of the Nation's waters.

DATES: Comments must be received on or before 60 days from the date of publication in the Federal Register.

ADDRESS: Comments (preferably in triplicate) may be addressed to the Commissioner of Customs, Attention: Regulations and Information Division, U.S. Customs Service, 1301 Constitution Avenue NW., Room 2426, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Paul Hegland, Carriers, Drawback and Bonds Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229; 202–566–5706.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to section 91, title 46, United States Code (46 U.S.C. 91), before any vessel may depart the United States for a foreign port, clearance must be obtained from Customs at the port of departure.

To assist in the enforcement of the Federal Water Pollution Control Act, as amended, the Water Quality Improvement Act of 1970 (33 U.S.C. 1161, 1162), provides that the Secretary of the Treasury, at the request of the Secretary of the Department in which the Coast Guard is operating, shall withhold clearance of any vessel the owner or operator of which is subject to a penalty for violation of the act.

Section 4.66a, Customs Regulations (19 CFR 4.66a), provides that if a district director of Customs receives a request from an officer of the Coast Guard to withhold clearance of a vessel whose owner or operator is subject to a civil penalty for knowingly discharging oil in violation of the Water Quality Improvement Act of 1970, clearance shall not be granted until the request is withdrawn or a bond or other surety satisfactory to the Coast Guard has been filed.

Section 4.66b, Customs Regulations (19 CFR 4.66b), provides procedures for Customs officers to follow in reporting to the Coast Guard discharges of refuse matter, hazardous substances, or oil in U.S. waters in violation of section 13 of the act of March 3, 1899 (30 Stat. 1152; 33 U.S.C. 407), and the Water Quality Improvement Act of 1970 (33 U.S.C. 1161, 1162).

The Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1321 (1976)), extended the provision for withholding clearance to include discharges of hazardous substances as well as oil, whether discharged knowingly or not, and deleted the provision for granting clearance upon withdrawal of the Coast Guard's request to withhold clearance. In addition, the authority cited for sections 4.66a and 4.66b was changed to section 2, 86 Stat. 862, 864, 865, as amended; 33 U.S.C. 1321. Therefore, Customs proposes to amend sections 4.66a and 4.66b, Customs Regulations, to conform with the amended law.

PROPOSED AMENDMENTS

It is proposed to amend part 4, Customs Regulations (19 CFR part 4), in the following manner:

Section 4.66a would be amended to read as follows:

4.66a Illegal discharge of oil and hazardous substances.

If a district director receives a request from an officer of the U.S. Coast Guard to withhold clearance of a vessel whose owner or operator is subject to a civil penalty for discharging oil or a hazardous substance into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone in quantities determined to be harmful by appropriate authorities, such clearance shall not be granted until the district director is informed that a bond or other surety satisfactory to the Coast Guard has been filed.

(Sec. 2, 86 Stat. 862, et seq., as amended; R.S. 4197, as amended; 33 U.S.C. 1321, 46 U.S.C. 91.)

Section 4.66b(a) would be amended to read as follows:

4.66b Pollution of coastal and navigable waters.

(a) If any Customs officer has reason to believe that any refuse matter is being or has been deposited in navigable waters or any tributary of any navigable waters in violation of section 13 of the act of March 3, 1899 (30 Stat. 1152; 33 U.S.C. 407), or oil or a hazardous substance is being or has been discharged into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone in violation of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251, 1321), he shall promptly furnish to the district director a full report of the incident, together with the names of witnesses and, when practicable, a sample of the material discharged from the vessel in question.

* * * * * * *

(30 Stat. 1152; sec. 2, 86 Stat. 862, et seq., as amended; 33 U.S.C. 407, 1321.)

COMMENTS

Before adopting this proposal, consideration will be given to any written comments timely submitted to the Commissioner of Customs. Comments submitted will be available for public inspection in accordance with section 103.8(b), Customs Regulations (19 CFR 103.8(b)), on normal business days during the hours of 9 a.m. to 4:30 p.m., at the Regulations and Information Division, Room 2426, Headquarters, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229.

AUTHORITY

These changes are proposed under the authority of R.S. 251, as amended; R.S. 4197, as amended; 30 Stat. 1152; section 624, 46 Stat. 759; section 2, 86 Stat. 862, et seq., as amended (19 U.S.C. 66, 1624; 33 U.S.C. 407, 1321; 46 U.S.C. 91).

INAPPLICABILITY OF REGULATORY FLEXIBILITY ACT

Because the contemplated effects of the Federal Water Pollution Control Act Amendments of 1972 are presumed to have been considered by the Congress, and are considered to flow from that legal authority, not from the regulation, the regulation is not expected to: have significant secondary or incidential effects on a substantial number of small entities; impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities; or generate significant interest or attention from small entities through comments, either formal or informal.

Accordingly, the proposed amendments do not require a regulatory flexibility analysis under the provisions of Public Law 96–354, the Regulatory Flexibility Act (5 U.S.C. 601, et seq.).

DRAFTING INFORMATION

The principal author of this document was Lawrence P. Dunham, Regulations and Information Division, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

WILLIAM T. ARCHEY,
Acting Commissioner of Customs.

Approved: April 22, 1981.

JOHN P. SIMPSON,
Acting Assistant Secretary of the Treasury.

United States Court of International Trade

Decisions of the United States Court of International Trade

(Slip Op. 81-31)

TEXAS INSTRUMENTS INCORPORATED, PLAINTIFF *v.* THE UNITED STATES, DEFENDANT

Court No. 80-10-01666

Before BOE, Judge.

SOLID STATE ELECTRONIC WATCH MODULES AND SOLID STATE ELECTRONIC WATCHES

I. A solid state electronic watch module does not contain a mechanism incorporating moving parts to which or from which

motion is transferred and, accordingly, is not a "watch movement" within the intendment of the Tariff Schedules of the United States.

II. A solid state electronic watch consisting of a solid state electronic module fitted in a plastic case cannot be classified as a watch under item 715.05, nor as "jewelry and other objects of personal adornment" under item 740.38, TSUS, but is properly classified under item 688.45 as "electrical articles and electrical parts of articles, not specially provided for, other."

[Judgment for plaintiff.]

(Decided April 17, 1981)

Frederick L. Ikenson on the brief and at the oral argument for the plaintiff.

Thomas S. Martin, Acting Assistant Attorney General; *Joseph I. Liebman*, Attorney in Charge, International Trade Field Office, Commercial Litigation Branch (*Jerry P. Wiskin* on the brief and at the oral argument), for the defendant.

BOE, Judge: The merchandise which is the subject of the above-entitled cause of action consists of solid state electronic watch modules and solid state electronic watches entered at Lubbock, Tex., in June 1980. Upon liquidation the Director of Customs at Dallas-Fort Worth, Tex., classified the solid state electronic watch modules under item 716.18, TSUS (1980), providing:

Schedule 7, part 2, subpart E		
Watch movements, assembled, without dials or hands, or with dials or hands whether or not assembled thereon:		
* * * * * * *		
Having no jewels or not over 17 jewels:		
Not adjusted, not self-winding (or if a self-winding device cannot be incorporated therein), and not constructed or designed to operate for a period in excess of 47 hours without rewinding:		
Having no jewels or only 1 jewel:		
* * * * * * *		
716.18	Over 0.6 but not over 1.77 inches in width-------	67¢ each

The solid state electronic watches were classified under item 715.05, TSUS, providing:

715.05	Watches	The column 1 rates applicable to the cases, plus the column 1 rates applicable to the movements, if such cases and movements were were imported separately.

The plaintiff, protesting liquidated classifications, claims the imported merchandise, the solid state modules as well as the solid state watches, are properly classifiable under item 688.45, TSUS (1980) (2d supp. Mar. 28, 1980), providing:

	Schedule 6, part 5 Electrical articles and electrical parts of articles, not specially provided for: Electrical articles using preprogrammed digital integrated circuits to produce sound:	
688.45	Other	5.3% ad val.

The solid state modules which are a part of the imported entries consist of a substrate on which are affixed an integrated circuit chip, a capacitor, a quartz crystal and a digital display, more specifically referred to as a liquid crystal display (LCD). Included as a part of the module are certain additional stationary parts such as a clip to contain batteries and electrical connections between the substrate and the digital display.

The solid state electronic watches, comprising the remaining balance of the imported entries, consist of plastic cases into which the solid state electronic modules, aforedescribed, are fitted and retained.

The plaintiff in seeking a determination herein by its motion for summary judgment relies principally upon the prior decisions of this court and the affirming decisions of our appellate court in the cases of *United States* v. *Texas Instruments, Inc.*, 67 CCPA ——, C.A.D. 1244, 620 F. 2d 269 (1980), *aff'g* 82 Cust. Ct. 272, 475 F. Supp. 1183 (1979) and *United States* v. *Texas Instruments, Inc.*, 67 CCPA ——, C.A.D. 1243, 620 F. 2d 272 (1980), *aff'g* 82 Cust. Ct. 287, 475 F. Supp. 1193 (1979).

The defendant in its opposition to plaintiff's motion for summary judgment contends that the foregoing decisions are not controlling in the instant action and that genuine triable issues of fact exist herein, thereby precluding the entry of summary judgment.

It is undisputed that the imported merchandise in the instant action is not the same as the imported merchandise which was the subject matter in the prior *Texas Instruments* decisions, aforecited. In the first *Texas Instruments* case cited *supra*, the imported merchandise consisted of an encapsulated integrated circuit without a digital display affixed thereto and without a capacitor or a quartz crystal affixed to the module in the space which had been provided therefor. Notwithstanding the difference with respect to the specific identity of the merchandise in issue existing in the instant case and the prior *Texas Instruments* decisions, the court is of the opinion that the inclusion of the components (capacitor, quartz crystal, and digital display) as a part of the imported solid state electronic module in no manner serves to remove the same from the rationale of the prior determinations of this court and our appellate court.

In the prior *Texas Instruments* decision C.A.D. 1244, *supra*, affirming the decision of the trial court our appellate court determined that an integrated circuit, a component of a solid state electronic module, was not classifiable under item 720.75, TSUS (1976), as "other assemblies and subassemblies" for "watch movements." The appellate court found that in accordance with the common and commercial meaning of the term "movement" at the time the Tariff Schedules of the United States were adopted, a "watch movement" as used in the Tariff Schedules of the United States requires a mechanism possessing moving parts to which or from which motion is transferred. The court further found that neither the Tariff Classification Study nor the Congressional Record indicates that solid state electronic modules, having no moving parts, were intended by the Congress to be included within the tariff schedule provisions for "watch movements." The lexicographic and dictionary definitions as well as the testimony adduced, all with respect to the common and commercial meaning of the term "movement" at the time of the enactment of the Tariff Schedules of the United States, satisfied both the trial court as well as the appellate court that "mechanism," "works" or "body of parts" to which or from which motion is transferred is a requisite identifying characteristic of a "watch movement."

The government in an effort to bring itself within the foregoing definition of a "watch movement" again urges that an acknowledged vibration existing within the quartz crystal, a component of the solid state module, constitutes a motion sufficient to satisfy the

intended requirement. The trial court as well as the appellate court, without reservation, rejected this contention by the government when urged in the prior *Texas Instruments* cases, *supra*. In referring to the quantum or magnitude of the alleged motion within the quartz crystal as roughly one angstrom or one ten-billionth of a meter, our appellate court formerly characterized such motion as "essentially molecular vibration" neither transmitting nor transferring mechanical energy or motion to or from any other part.

Suffice it to say, this court is satisfied that the solid state electronic module, as imported, does not bear an essential resemblance to a "watch movement" as contemplated by the Tariff Schedules of the United States. *Davies Turner & Co.* v. *United States*, 45 CCPA 39, C.A.D. 669 (1957).

As our appellate court has stated in *United States* v. *Texas Instruments, Inc.*, C.A.D. 1244, *supra:*

> The criteria established by the TSUS for classification as a watch movement are: (1) A timepiece movement, (2) less than 1.77 inches wide and 0.5 inch thick. Though the dimensional requirements are met by the imported article, it does not bear an essential resemblance to a timepiece movement because the imported article is not and does not contain a movement.

67 CCPA ——, 620 F. 2d at 271.

The remaining balance of the imported merchandise consists of solid state electronic watches in which the solid state electronic modules, as hereinbefore described, are fitted and encased. In contending that these watches are properly classified under item 715.05, TSUS (1980), the government fails to recognize the underlying criteria requisite to the classification of an imported article as a watch under subpart E, part 2 of schedule 7. Headnotes to subpart E provide in part:

> *Subpart E headnotes*:
>
> 1. This subpart covers watches and clocks, time switches and other timing apparatus with clock or watch movements, and parts of these articles.* * *.
>
> 2. For the purposes of this subpart—
>
> (a) the term *"watches"* embraces timepieces (including timepieces having special features, such as chronographs, calendar watches, stopwatches, and watches designed for use in skindiving) suitable for wearing or carrying on or about the person, whether or not the movement therein is within the definition of "watch movement" in headnote 2(b), below;
>
> (b) the term *"watch movement"* means a timepiece movement measuring less than 1.77 inches in width and less than 0.50 inch in thickness; * * *.
>
> 3. (a) The complete citation for watches covered by item 715.05 and clocks covered by items 715.15 and 715.16 shall be each of such item numbers, *followed by the appropriate item*

numbers for the respective movements and cases comprising such watches or clocks. [Italic supplied.]

From the foregoing it appears implicit that subpart E, in which item 715.05 is included, embraces only watches possessing "watch movements." From the aforequoted headnote 2(a) the term "watches" embraces timepieces—whether the *movements* therein may or may not fall within the dimensional requirements provided for in the subsequent headnote 2(b). Thus, pursuant to headnote 3(a) the classification of a watch under item 715.05 includes the tariff rate applicable to the *case* of the watch plus the rate applicable to the *movement* contained therein in the same manner as if the case and the movement contained therein were imported separately. Inasmuch as no enlightenment is provided by the tariff schedules as to what constitutes a movement, except as to its size and association with a "timepiece," it has been necessary for the courts to determine the common meaning and understanding of that term in the horological industry. As this court has previously indicated herein, the solid state electronic module, having no mechanism possessing moving parts from which or to which motion is transferred, was not within the common meaning and understanding of the term "watch movements" at the time of the enactment of the Tariff Schedules of the United States. Accordingly, if the basic elements of logic are to remain inviolate, it can only follow that imported solid state electronic watches, in which the solid state electronic modules are encased and are parts thereof, likewise cannot be classified under subpart E, part 2 of schedule 7, TSUS, and specifically item 715.05 thereof.

Accompanying its response in opposition to plaintiff's motion for summary judgment, the defendant has filed a cross-motion for leave to amend its answer asserting as an alternative claim that the merchandise in question be classified under item 740.38. This alleged alternative classification is fully set forth in defendant's cross-motion and an argument in support thereof is contained as a part of defendant's memorandum in opposition to plaintiff's motion for summary judgment. Although plaintiff in its reply memorandum objects to the granting of defendant's cross-motion, full consideration thereof and an argument with respect thereto is contained at length in plaintiff's reply memorandum. It appears clear, therefore, that the plaintiff has been fully apprised with respect to the alternative claim concerning which the defendant seeks further adjudication. The very purpose of an amended answer has thus been satisfied.

Rule 15(b) of this court provides:

> (b) Amendments To Conform to the Eivdence.
>
> When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings.

Accordingly, in the interest of securing an immediate adjudication of all claimed classifications herein without incurring unnecessary procedural time-consuming delays, thereby obviating renewed and repeated litigation, this court accepts defendant's cross-motion as an amended answer for the purpose of considering its alternative classification.[1]

Item 740.38 upon which defendant thus predicates its alternative claim provides:

Schedule 7, part 6		
Subpart A.—Jewelry and Related Articles		
Jewelry and other objects of personal adornment not provided for in the foregoing provisions of this part (except articles excluded by headnote 3 of this part), and parts thereof:		
* * * * * * *		
Valued over 20 cents per dozen pieces or parts:		
Watch bracelets:		
* * * * * * *		
740.38	Other	25.4% ad val.

The defendant contends that inasmuch as headnote 1 (ii) to subpart A, part 6, schedule 7, TSUS, excludes from classification thereunder watches classified under subpart E, part 2, schedule 7, the nonapplicability of the foregoing exclusionary headnote would result in the classification of watches as "jewelry and other objects of personal adornment." In support of its contention the defendant relies on headnote 2 to subpart A, part 6, schedule 7, TSUS, providing in part:

> 2. For the purposes of this subpart—
>
> (a) the term "*jewelry and other objects of personal adornment*" (items 740.05 through 740.38), includes rings, earrings and clips, bracelets (including watch bracelets and identification bracelets), necklaces, neck chains, watch chains, key chains, brooches, tiepins and clips, collar pins and clips, cuff links, dress-studs, buttons, buckles and slides, medals, military, fraternal and similar emblems, and insignia (including those prescribed for military, police, or other uniforms), fobs, pendants, hair ornaments (including barrettes, hairslides, tiaras, and dress combs), and similar objects of personal adornment, * * *.

This court is unable to share in defendant's reasoning and in particular its questionable conclusion, presumably derived from the aforequoted headnote 2. An examination of the articles specified in head-

[1] Plaintiff acknowledged at the oral argument he would not be prejudiced by the granting of defendant's cross-motion.

note 2 to be included as "jewelry and other objects of personal adornment" fails to indicate to this court that the imported merchandise can be said to be "within the named exemplars" as urged by the defendant. "Watch bracelets" and "watch chains" are neither "watches" nor "movements" as defined by the tariff schedules. The classification of a "watch bracelet" or a "watch chain" as an object of adornment under headnote 2, indeed, cannot be deemed to include the watch or the movement thereof in such a classification to any greater extent than it can be said that a "key chain" specified as an "exemplar" under headnote 2, can serve to cause the key, to which the chain may be attached, to be likewise classified thereunder.

Although "watch bracelets" have been specifically designated as "exemplars" of the term "jewelry and other objects of personal adornment" under headnote 2 aforequoted, it is of interest to note that, as evidenced by official entry papers, the watch bands attached to the imported solid state watches in issue have not been considered "jewelry or other objects of personal adornment" but have been classified and liquidated by the Customs Service under item 774.55, TSUS, as "articles not specially provided for, of rubber or plastics: * * * Other." Absent the classification of the black plastic bracelet as "jewelry" or an "object of personal adornment" it, indeed, would be a distortion of reasoning and difficult to justify the classification of the black plastic solid state watches, to which the plastic bracelet is attached, as an "object of adornment." From an examination of representative samples of the merchandise in question (exhibit 6, attachment A), the court can only conclude that the imported solid state watches are functional and serve a utilitarian purpose when worn on the person and cannot be classified, as urged by the defendant, as "jewelry and other objects of personal adornment." The exhibit itself may be said to be a most potent witness.[2] *Marshall Field & Co. v. United States*, 45 CCPA 72, C.A.D. 676 (1958).

In view of the assertions of the defendant that genuine issues of material fact exist and that a trial determining such issues is accordingly required, the remaining question to be determined herein is whether from the record submitted summary judgment may be granted. Were the classification of the merchandise in issue to be predicated upon the common understanding and meaning of the term "watch movement" as the term may have been used since the introduction of the solid state modules and watches commercially in the United States subsequent to 1972, it might be argued that the affidavits submitted by the defendants substantiate defendant's con-

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[2] The burden of proof rests upon the defendant to establish the classification urged in its alternative claim. The defendant has not met this burden. See *United States v. R. J. Saunders & Co.*, 42 CCPA 128, C.A.D. 584 (1955).

tention. However, the defendant fails to recognize that it is the common as well as the commerical understanding of the meaning of the term "watch movements" at the time that the Tariff Schedules of the United States were enacted which evidences the congressional intent as to the meaning of that term in the tariff schedules. No showing has been made nor attempted to be made by the defendant that this court or our appellate court have erred in the construction of the meaning of the term "watch movement," as hereinbefore defined, and more particularly enunciated in the prior decisions of these courts in the cases of *United States* v. *Texas Instruments, Inc., supra.*

As this court has stated in previous decisions, to attempt to distort the tariff schedules in order to provide a "resting place" for articles which by tariff definition as well as by the determined congressional intent cannot be properly so accommodated will only serve to wreak untold confusion on the application of these schedules upon which the integrity of our foreign commerce depends. The courts cannot be asked to restructure the tariff schedules by judicial fiat in order to accommodate scientific and engineering innovations which far transcend the vision and intent of the Congress at the time of the enactment of the tariff schedules. It is true, as defendant urges, that it is an established principle of Customs law that tariff schedules, are written for the future as well as for present application and may embrace merchandise unknown at the time of their enactment. It must be borne in mind, however, that as a corollary thereto it is likewise well established that in applying a tariff provision to an article, unknown at the time of the enactment thereof, such an article must possess an essential resemblance to the characteristics so described by the applicable tariff provision. As our appellate court has clearly stated in the case of *Smillie & Co.* v. *United States*, 12 Cust. Ct. Appls. 365, 367, T.D. 40520 (1924):

> As to all such articles the statute will be held to apply if the articles possess an essential resemblance to the ones named in the statute *in those particulars which the statute established as the criteria of the classification.* [Italic supplied.]

In the opinion of this court the merchandise in question does not bear a resemblance to a "watch movement" as provided by item 716.18 [3] nor to a "watch" as provided by item 715.05, and accordingly, is not properly classifiable thereunder. It is the further opinion of the court that the merchandise in question is more specifically described

[3] The court notes with interest the classification under which the subject solid state module has been liquidated. Indeed, the solid state module cannot be said to be included within the descriptive heading requiring the article to be "not constructed or designed to operate for a period in excess of 47 hours without rewinding." See Descriptive heading to items 716.10 through 716.44, inclusive.

under item 688.45, TSUS, as electrical articles and electrical parts of articles, not specially provided for, other.

In the tariff schedules of 1978 and 1980 there is evidenced an increased recognition of electrical articles based on integrated circuits and their capabilities to perform various functions previously performed only by mechanical processes. Thus, in these recent schedules specific and expanded reference is made to a variety of integrated circuits, signifying an awareness of the diverse uses to which these articles are rapidly being adapted. In the same manner as the preceding item, 688.44, specifically relates to electrical articles using digital integrated circuits to produce sound, so under the claimed classification, item 688.45. "electrical articles * * *, other," the merchandise in question consists of articles using digital integrated circuits to produce time.

It appearing, therefore, that no genuine issue of material fact exists herein and that the merchandise in issue consisting of solid state electronic modules and solid state electronic watches cannot be properly classified as "watch movements" and "watches" respectively, as liquidated, nor under the claimed alternative classification urged by the defendant and it further appearing that the merchandise in question properly should be classified under item 688.45, TSUS, as claimed by the plaintiff, the motion of the plaintiff for summary judgment is, accordingly, granted.

Let judgment be entered accordingly.

Judgment of the United States Court of International Trade in Appealed Case

April 16, 1981

APPEAL 80–5.—Pasco Terminals, Inc. *v.* United States.—CRUDE OR ELEMENTAL SULPHUR—DUMPING DUTIES—AFFIRMATIVE INJURY DETERMINATION—ANTIDUMPING ACT OF 1921—SUMMARY JUDGMENT.—C.D. 4823 affirmed December 11, 1980 (C.A.D. 1256).

International Trade Commission Notices

Investigations by the U.S. International Trade Commission

DEPARTMENT OF THE TREASURY, *April 30, 1980.*

The appended notices relating to investigations by the U.S. International Trade Commission are published for the information of Customs Officers and others concerned.

R. E. CHASEN,
Commissioner of Customs.

Investigation No. 22–43

CERTAIN TOBACCO

AGENCY: U.S. International Trade Commission.

ACTION: Change of date of public hearing in investigation No. 22–43 to June 24, 1981.

EFFECTIVE DATE: April 21, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. William Lipovsky, 202–724–0097.

SUPPLEMENTARY INFORMATION: The hearing in this investigation will be held beginning at 10 a.m., e.d.t., Wednesday, June 24, 1981, in the Commission's Hearing Room, U.S. International Trade Commission Building, 701 E Street NW., Washington, D.C. 20436. A hearing date of May 11, 1981, had previously been announced in the Commission's notice of institution of the investigation as published in the Federal Register of March 11, 1981 (46 F.R. 16162). The Commission's hearing has been rescheduled as a result of a request for a postponement by the U.S. Department of Agriculture in order to prepare its testimony on the issues involved in this investigation.

Persons wishing to appear at the hearing should follow the prehearing procedures outlined in the notice of March 11, 1981. Requests

to appear at the Commission's hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m., e.d.t.), May 27, 1981. The prehearing conference will be held on Friday, May 29, 1981, at 10 a.m. e.d.t., in room 117 of the U.S. International Trade Commission Building. Nineteen copies of the prehearing briefs should be submitted to the Secretary to the Commission not later than the close of business on June 18, 1981. Written statements submitted by interested persons in lieu of an appearance at the hearing must be received not later than July 1, 1981.

By order of the Commission.

Issued: April 21, 1981.

KENNETH R. MASON,
Secretary.

In the Matter of
CERTAIN SHELL BRIM HATS } Investigation No. 337–TA–86

Notice of Termination

AGENCY: U.S. International Trade Commission.

ACTION: Termination of investigation and issuance of consent order.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has approved and issued a consent order in the above-captioned investigation, thereby terminating the investigation.

SUPPLEMENTARY INFORMATION: In connection with a complaint filed on May 4, 1980, under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) alleging unfair acts and methods of competition in the importation into and sale in the United States of certain shell brim hats, complainant, the Commission investigative attorney, and the respondents entered into a consent order agreement. Complainant is Zwicker Knitting Mills and respondents are Aris Isotoner Gloves Inc., and Aris (Philippines) Inc. In a notice of investigation published in the Federal Register on June 25, 1980 (45 F.R. 42894), the Commission stated that the investigation was being undertaken to determine whether section 337 is being violated by reason of infringement of U.S. Letters Patent 3,898,699 by respondents' shell brim hats.

Copies of the Commission's action and order, the consent order, and all other nonconfidential documents in the record of this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. Inter-

national Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161.

FOR FURTHER INFORMATION CONTACT: Jeffrey S. Neeley, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–0359.

By order of the Commission.

Issued: April 22, 1981.

KENNETH R. MASON,
Secretary.

In the Matter of CERTAIN MOLDED-IN SANDWICH PANEL INSERTS AND METHODS FOR THEIR INSTALLATION	Investigation No. 337–TA–99

Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on March 27, 1981, under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), on behalf of Shur-Lok Corp., 2451 White Road, Irvine, Calif. 92713. The complaint alleges unfair methods of competition and unfair acts in the importation of certain molded-in sandwich panel inserts into the United States, or in their sale, by reason of (1) the alleged infringement by said molded-in sandwich panel inserts of the sole claim of U.S. Letters Patent 3,182,015, (2) the alleged infringement of claims 1–4 of U.S. Letters Patent 3,271,498 and all four claims of U.S. Letters Patent 3,392,225 and the inducement of and/or contribution to said infringement, and (3) the alleged misappropriation of complainant's trade secrets. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The complainant requests that, after a full investigation, the Commission issue a permanent exclusion order and a cease and desist order.

AUTHORITY: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in section 210.12 of the Commission's Rules of Practice and Procedure.

SCOPE OF THE INVESTIGATION: Having considered the complaint, the U.S. International Trade Commission, on April 21, 1981, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine whether there is a violation of subsection (a) of section 337 in the unlawful importation of certain molded-in sandwich panel inserts into the United States, or in their sale, by reason of (1) the alleged infringement by said molded-in sandwich panel inserts of the sole claim of U.S. Letters Patent 3,182,015, (2) the alleged infringement of claims 1–4 of U.S. Letters Patent 3,271,498 and all four claims of U.S. Letters Patent 3,392,225 and the inducement of and/or contribution to said infringement, and (3) the alleged misappropriation of complainant's trade secrets, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States;

(2) For the purpose of this investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—

Shur-Lok Corporation
2451 White Road
Irvine, California 92713

(b) The respondents are the following companies and are the parties upon which the complaint is to be served:

(i) The Young Engineers, Inc.
23151 Alcada Drive, B–5
Laguna Hills, California 92653—

is allegedly engaged in the unlawful importation of certain molded-in sandwich panel inserts into the United States, or in their sale, in the inducement of and/or contribution to the practice of certain methods for the installation of said inserts (said inserts and methods being covered by one or more claims of complainant's patents hereinabove specified), and in the misappropriation of complainant's trade secrets; and

(ii) C&D Plastics
5412 Argosy Drive
Huntington Beach, California 92649

Hitco Corporation
18662 MacArthur Boulevard
Irvine, California 92707

Composites Unlimited
17952 Cowan Street
Irvine, California 92714

U.O.P. Aerospace Division
7107 Jackson Street
Paramount, California 90723

Weber Aircraft
2820 Ontario Street
Burbank, California 91504—

are allegedly engaged in the unlawful use of certain imported molded-in sandwich panel inserts and in the unlawful practice of certain methods for their installation (said inserts and methods being covered by one or more claims of complainant's patents hereinabove specified);

(c) Ralph Elsas-Patrick, Unfair Import Investigations Division, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, shall be the Commission investigative attorney, a party to this investigation;

Respondents named in paragraph (2)(b)(ii) above were not proposed by complainant but were named because allegations in the complaint so warrant.

(3) For the investigation so instituted, Donald K. Duvall, Chief Administrative Law Judge, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, shall designate the presiding officer.

Responses must be submitted by the named respondents in accordance with section 210.21 of the Commission's Rules of Practice and Procedure (19 CFR 210.21). Pursuant to sections 201.16(d) and 210.21(b) of the rules, such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting a response will not be granted unless good and sufficient cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the presiding officer and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both a recommended determination and a final determination containing such findings.

The complaint, except for any confidential information contained therein, is available for inspection during official working hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161.

FOR FURTHER INFORMATION CONTACT: Ralph Elsas-Patrick, Unfair Import Investigations Division, U.S. International Trade Commission, telephone 202–523–0440.

By order of the Commission.

Issued: April 22, 1981.

KENNETH R. MASON,
Secretary.

Investigation No. 751–TA–2 (Formerly AA1921–66A)

TELEVISION RECEIVING SETS FROM JAPAN
ANNOUNCEMENT OF ADMINISTRATIVE DEADLINE

AGENCY: U.S. International Trade Commission.

ACTION: Establishment and announcement of administrative deadline.

SUMMARY: On December 17, 1980, the Commission announced an indefinite postponement and waiver of the administrative deadline in this investigation under section 751(b) of the Tariff Act of 1930 (45 F.R. 83088). The deadline was postponed until a sufficient number of purchasers and importers of television receiving sets from Japan responded to the Commission's questionnaires to provide it with adequate information to enable it to make an informed decision. The purpose of the investigation is to determine whether an industry in the United States would be materially injured, or would be threatened with material injury if the antidumping finding concerning television receiving sets from Japan were revoked.

The Commission hereby establishes a new administrative deadline of June 12, 1981, for notifying the Department of Commerce of its final determination in this investigation.

WRITTEN SUBMISSIONS: Only submissions in response to the statement of Orion Electric Co., Ltd., and Otake Trading Co., Ltd., which was received by the Commission on April 1, 1981, and responses to other developments that have occurred since the Commission's hearing on November 12 and 13, 1980, will be accepted. The final date for submissions to the record is May 8, 1981.

EFFECTIVE DATE: April 23, 1981.

FOR FURTHER INFORMATION CONTACT: Daniel F. Leahy, Jr., U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, 202–523–1369.

By order of the Commission.

Issued: April 23, 1981.

KENNETH R. MASON,
Secretary.

In the Matter of CERTAIN LARGE VIDEO MATRIX DISPLAY SYSTEMS AND COMPONENTS THEREOF	Investigation No. 337–TA–75

CHANGE IN TIME LIMIT FOR ORAL ARGUMENT ON VIOLATION

AGENCY: U.S. International Trade Commission.

ACTION: Change in time limit for argument on violation issue at Commission hearing on May 8, 1981.

SUMMARY: Upon a timely request by respondent SSIH Equipment S.A. showing need, the Commission has ordered that parties to the investigation be allowed 40 minutes for argument concerning the presiding officer's recommended determination at the May 8, 1981, hearing, rather than the 20 minutes specified in the notice of hearing, 46 F.R. 22995 (Apr. 22, 1981).

FOR FURTHER INFORMATION CONTACT: Michael B. Jennison, Esq., Office of the General Counsel, U.S. International Trade Commission, 202–532–0350.

By order of the Commission.

Issued: April 24, 1981.

KENNETH R. MASON,
Secretary.

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U.S. Customs Service

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